

First Amendment to the Draft SEIR

Icon-Echo Mixed-Use Project

File Nos.: SP21-031, T21-033, & ER21-134

SCH No.: 2021090554



prepared by

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

50 YEARS
EST. 1972
In Consultation with
DAVID J. POWERS
& ASSOCIATES, INC.
ENVIRONMENTAL CONSULTANTS & PLANNERS

October 2022

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Attachment A: Draft SEIR Comment Letters

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SECTION 1.0 INTRODUCTION

This First Amendment, together with the Draft Supplemental Environmental Impact Report (SEIR), constitute the Final SEIR for the Icon-Echo Mixed-Use project.

1.1 PURPOSE OF THE FINAL SEIR

In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, the Final SEIR provides objective information regarding the environmental consequences of the proposed project. The Final SEIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The Final SEIR is intended to be used by the City of San José in making decisions regarding the project.

Pursuant to CEQA Guidelines Section 15090(a), prior to approving a project, the Lead Agency shall certify that:

- (1) The Final EIR has been completed in compliance with CEQA;
- (2) The Final EIR was presented to the decision-making body of the Lead Agency, and that the decision-making body reviewed and considered the information contained in the Final EIR prior to approving the project; and
- (3) The Final EIR reflects the Lead Agency's independent judgment and analysis.

1.2 CONTENTS OF THE FINAL EIR

CEQA Guidelines Section 15132 specify that the Final SEIR shall consist of:

- a) The Draft SEIR or a revision of the Draft;
- b) Comments and recommendations received on the Draft SEIR either verbatim or in summary;
- c) A list of persons, organizations, and public agencies commenting on the Draft SEIR;
- d) The Lead Agency's responses to significant environmental points raised in the review and consultation process; and
- e) Any other information added by the Lead Agency.

1.3 PUBLIC REVIEW

In accordance with CEQA and the CEQA Guidelines (Public Resources Code Section 21092.5[a] and CEQA Guidelines Section 15088[b]), the City shall provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the EIR. The Final SEIR and all documents referenced in the Final SEIR are available for review on the City's website: <https://www.sanjoseca.gov/active-eirs/>.

SECTION 2.0 DRAFT SEIR PUBLIC REVIEW SUMMARY

The Draft SEIR for the Icon-Echo Mixed-Use project, dated June 2022, was circulated to affected public agencies and interested parties for an extended 45-day review period from June 17, 2022 through August 1, 2022. The City undertook the following actions to inform the public of the availability of the Draft SEIR:

- The Notice of Availability (NOA) of Draft SEIR was published on the City's [website](#) and in the San José Mercury News;
- The NOA of the Draft SEIR was mailed and/or emailed to neighboring cities, tribal contacts, environmental protection organizations, and individual members of the public who indicated interest in the project or requested notice of projects in the City;
- The Notice of Availability was sent to members of the public who signed up for City notices via *Newsflash*;
- The Draft SEIR was delivered to the State Clearinghouse on June 17, 2022, which forwarded the Draft SEIR to various governmental agencies and organizations, (see *Section 3.0* for a list of agencies and organizations that received the Draft SEIR); and
- Copies of the Draft SEIR were made available on the City's [website](#).

SECTION 3.0 DRAFT SEIR RECIPIENTS

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft SEIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies.

The following agencies received a copy of the Draft SEIR via the State Clearinghouse:

- California Air Resources Board
- California Department of Conservation
- California Department of Fish and Wildlife, Bay Delta Region 3
- California Department of Forestry and Fire Protection
- California Department of Parks and Recreation
- California Department of Transportation, District 4
- California Department of Transportation, Division of Aeronautics
- California Department of Transportation, Division of Transportation Planning
- California Department of Water Resources
- California Governor's Office of Emergency Services
- California Highway Patrol
- California Native American Heritage Commission
- California Natural Resources Agency
- California Public Utilities Commission
- California Regional Water Quality Control Board, San Francisco Bay Region 2
- Department of Toxic Substances Control
- Office of Historic Preservation
- State Water Resources Control Board, Division of Drinking Water
- State Water Resources Control Board, Division of Water Quality

Copies of the Notice of Availability (NOA) for the Draft SEIR were sent by mail and/or email to the following organizations, businesses, and individuals who expressed interest in the project:

- Valley Transportation Authority, Plan Review
- Santa Clara County, Roads and Airports Department
- Jack Broadbent, Bay Area Air Quality Management District (BAAQMD)
- Wally Charles, Association of Bay Area Governments
- Kristin Garrison, California Department of Fish and Wildlife
- San Francisco Bay National Wildlife Refuge, US Fish and Wildlife Service
- California Energy Commission, Media Office
- Kalin Kipling-Mojaddedi, California Environmental Protection Agency
- California Air Resources Board

- Henry Hilken, Director, Planning & Climate Protection, BAAQMD;
- Ellen Talbo, [Santa Clara County Roads and Airports Department](#)
- Elizabeth Bugarin, Metro Transportation Commission
- California Department of Transportation, District 4
- Philip Crimmins, Senior Transportation Planner, California Department of Transportation
- Colleen Haggerty, Valley Water
- Ben Aghegnehu, Santa Clara County Roads and Airports
- Pacific Gas and Electric (PG&E), Plan Review
- Jake Walsh, San José Water Company
- Bill Tuttle, San José Water Company
- Nate LeBlanc, San José Downtown Association
- Chairman Valentin Lopez, [Amah Mutsun Tribal Council](#)
- Timothy Perez, North Valley Yokuts Tribe
- Chairperson Irene Zwierlein, Amah Mutsun Tribal Band of Mission San Juan Bautista
- Chairperson Katherine Perez, North Valley Yokuts Tribe
- Kanyon Sayers-Roods, MLD Contact, Indian Canyon Mutsun Band of Costanoan
- Andrew Galvan, The Ohlone Indian Tribe
- Chairperson Ann Marie Sayers, Indian Canyon Mutsun Band of Costanoan
- Kenneth Woodrow, Tribal Chair. Wuksache Indian Tribe/Eshom Valley Band
- Charlene Nijmeh, Tribal Chairwoman, Muwekma Ohlone Tribe
- Confederated Villages of Lisjan;
- Vice Chairwoman Monica Arellano, Muwekma Ohlone Indian Tribe of the SF Bay Area
- Chairwoman Quirina Geary, Tamien Nation
- Ada Marquez, San José State University, School of Social Sciences, Department of Environmental Studies
- Santa Clara Valley Audubon Society
- Shani Kleinhaus, Santa Clara Valley Audubon Society
- Law Office of Joann Broderick Harms
- Kathy Sutherland
- Scott Knies, San José Downtown Association
- William T. Brooks, Brooks & Hess
- Erik Schoennauer, The Schoennauer Company
- Sierra Club, Loma Prieta Chapter
- Jean Dresden
- Larry Ames
- Laura Tolkoff, San Francisco Bay Area Planning and Urban Research Association (SPUR)
- Amanda Brown-Stevens, Greenbelt Alliance
- Santa Clara Valley Open Space Authority, Clerk
- Anne Christie, SPUR
- [Preservation Action Council of San José \(PAC*SJ\)](#)
- Andre Luthard, PAC*SJ
- California Native Plant Society, Santa Clara Valley Chapter
- Janet Laurain, Adams Broadwell Joseph & Cardozo
- Richard Drury, Lozeau Drury, LLP

- Michael Lozeau, Lozeau Drury, LLP
- Hannah Hughes, Lozeau Drury, LLP
- Sophie Roberts, Lozeau Drury, LLP
- Molly Greene, Lozeau Drury, LLP
- City of Campbell, Planning
- City of Cupertino, Planning
- City of Fremont, Planning
- Ned Thomas, City of Milpitas
- City of Palo Alto, Planning Division
- City of Santa Clara, Planning
- Reena Brilliot, Planning Manager, City of Santa Clara
- John Davidson, Principal Planner, City of Santa Clara
- Andrew Crabtree, Director of Community Development, City of Santa Clara
- Debbie Pedro, City of Saratoga Community Development Department
- Frances Reed, City of Saratoga Community Development Department
- Amber Blizinski, City of Sunnyvale Community Development
- Trudi Ryan, City of Sunnyvale Community Development Department
- Mark Connolly, Santa Clara County, Planning
- Leza Mikhail, County of Santa Clara Department of Planning and Development
- Rob Eastwood, City of Campbell Community Development Department
- Town of Los Gatos, Planning
- City of Morgan Hill, Planning Division
- Terry Linder, City of Morgan Hill, Community Development Department
- City of Mountain View, Community Development Department
- Michael Fossati, City of Milpitas
- Helen Ebert
- Mike Sodergren, PAC*SJ
- Shree Dharasker, Valley Water
- Michael Martin, Valley Water
- Lola Torney, Valley Transportation Authority
- Maya Smith, Adams Broadwell Joseph & Cardozo
- Lorrie J. LeLe, Adams Broadwell Joseph & Cardozo

SECTION 4.0 RESPONSES TO DRAFT SEIR COMMENTS

In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received by the City of San José on the Draft SEIR.

Comments are organized under headings containing the source of the letter and its date. The specific comments from each of the letters and/or emails are presented with each response to that specific comment directly following. Copies of the letters and emails received by the City of San José are included in their entirety in Attachment A of this document. Comments received on the Draft EIR are listed below.

<u>Comment Letter and Commenter</u>	<u>Page of Response</u>
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REGIONAL AND LOCAL AGENCIES

A. Valley Water (July 26, 2022)

Comment A.1: The Santa Clara Valley Water District (Valley Water) has reviewed the Draft Environmental Impact Report (EIR) for the ICON-ECHO Mixed Use Project in San José, received on June 22, 2022, and has the following comment:

The Water Supply Assessment (WSA) and EIR conclude that the project is consistent with Downtown Strategy which determined that there are adequate water supplies to support development through 2040. The Downtown Strategy makes certain assumptions regarding the expansion of water conservation efforts throughout Santa Clara County to ensure there are adequate water supplies. To ensure that water conservation goals are met in the future, the City needs to require all available water conservation and demand management measures for the project. Potential opportunities to minimize water and associated energy use include requiring water conservation measures from the Model Water Efficient New Development Ordinance, which include:

- Hot water recirculation systems
- Require installation of separate submeters to each unit to encourage efficient water use - studies have shown that adding submeters can reduce water use 15 to 30 percent
- Encourage non-potable reuse of water like recycled water, graywater and rainwater/stormwater through installation of dual plumbing for irrigation, toilet flushing, cooling towers, and other non-potable water uses
- Require dedicated landscape meters where applicable
- Weather- or soil-based irrigation controllers.

Response A.1: A Water Supply Assessment (WSA) was prepared for build out of the Downtown Strategy 2040 FEIR and a project-specific WSA (Appendix J of the Draft SEIR) was also prepared for the project. As stated by the commenter, the Draft SEIR and the WSA prepared for the project concluded that there would be sufficient water supplies to serve the project. As mentioned on page 13 in both Appendix A and the Draft SEIR, the project would be built in accordance with the California Green Building Standards Code (CALGreen) requirements. In addition, the project would use water efficient landscaping (i.e., drought tolerant and native species), in conformance with the City's Water Efficient Landscape Ordinance (Municipal Code Chapter 15.11) and General Plan Policy MS-3.1 (refer to Appendix H of the Draft SEIR). The project applicant confirmed that each residential unit would be submetered within the Northern Tower while each tenant would be separately submetered within the Southern Tower.¹

This comment does not raise any issues about the adequacy of the Draft SEIR. Therefore, no further response is required.

Comment A.2: In addition, Valley Water comments on the Notice of Preparation (NOP), submitted on November 4, 2021 should be addressed in the final EIR. Please provide Valley Water copies of

¹ Sinunu, Alex. Urban Catalyst. Personal communication. September 16, 2022.

future environmental documents when available.

Response A.2: The City of San José and applicant have considered your recommendations from the NOP to reduce or avoid adverse impacts to water supply. In addition, refer to Response A.1.

As mentioned on pages 72 and 73 of Appendix A (Initial Study) of the Draft SEIR and consistent with the Downtown Strategy 2040 FEIR, a Storm Water Pollution Prevention Plan, to be prepared by a qualified professional, shall include provisions for the proper management of dewatering effluent. In areas of suspected groundwater contamination (i.e., underlain by fill or near sites where chemical releases are known or suspected to have occurred), groundwater shall be analyzed by a state-certified laboratory for the suspected pollutants prior to discharge. The project applicant would be required to comply with the mitigation measures addressing potential on-site contamination under regulatory oversight, which are listed on pages 103-104 of the Draft SEIR, and all necessary remediation would be completed. In addition, the proposed project would be required to meet the requirements of applicable Building and Fire codes adopted or updated by the City and would be required to withstand soil hazards identified on-site by a site-specific geotechnical investigation, in addition to provisions for the proper management of dewatering effluent (refer to Standard Permit Conditions on pages 49-50 and 72-73 of the Initial Study (Appendix A of the Draft SEIR).

B. Bay Area Air Quality Management District (August 1, 2022)

Comment B.1: Bay Area Air Quality Management District (Air District) staff has reviewed the Draft Supplemental Environmental Impact Report (Draft SEIR) for the Icon-Echo Towers Mixed Use Project (Project). The Project is located in the City of San José (City), located along the westside of N. 4th Street between E. St. John Street and E. Santa Clara Street and would demolish existing uses and construct a 27-story mixed-use building consisting of 8,500 square feet of ground-floor retail use, 525,000 square feet of office use in the southern tower and 415 residential units in the northern tower. Parking for the Project would be provided in one level of below-ground parking and four floors of above-grade parking, totaling 1,146 parking spaces.

According to the Draft SEIR, the Project's maximally exposed individual is located on the second floor of the residence to the south of the project site opposite E. Santa Clara Street. In addition, two schools are located northeast of the site. Little Einstein Montessori Preschool, serving children ages 2 to 5 is located approximately 406 feet from the Project site and Horace Mann Preschool and Elementary School, serving children ages 2 to 10 is located 756 feet from the Project site.

Air District staff commends the City for their inclusion of increased housing density, and transportation demand management (TDM) incentives to minimize regional vehicle miles traveled and associated emissions from the Project. In addition, the use of green building practices to meet San Jose Reach Standards, as well as LEED Silver Certification, is highly commended.

Response B.1: The comment summarizes the project and does not raise any issues about the adequacy of the Draft SEIR. No response is required.

Comment B.2: Construction-Related Impacts

As noted in the Draft SEIR, the Project's construction emissions, along with the construction of 11 other approved and nearby developments (within 1,000 feet of the Project site), would exceed the Air District's Cumulative Source Threshold for fine particulate matter (PM_{2.5}) concentrations despite implementing mitigation measures. This poses significant concerns due to the Project's proximity to sensitive receptors, and due to these health risk impacts, the Air District recommends that additional mitigation measures be included beyond Mitigation Measure (MM) AQ-1 and AQ-2 to further mitigate construction-related impacts. The City should take precautions to ensure mitigation measures protect nearby receptors by:

- Requiring a rigorous Mitigation Monitoring and Reporting Plan that is actively enforced by the City to ensure all air quality mitigation measures are achieved as required.
- Requiring that all air quality mitigation measures proposed below are included as conditions of project approval.

Response B.2: The commenter is correct that even with implementation of Mitigation Measure (MM) AIR-1.1 and the identified Standard Permit Conditions listed on pages 35-36 of the Draft SEIR, the combination of existing sources, construction of nearby projects, and the proposed project would continue to exceed the BAAQMD significance cumulative threshold of 0.8 micrograms per cubic meter (µg/m³) for fine particulate matter (PM_{2.5}). As mentioned on pages 40-41 and Appendix B of the Draft SEIR, BAAQMD CEQA Guidelines state that in instances where a pre-existing cumulative health risk impact exists, the project's individual contribution to that cumulative impact should be analyzed and if project health risks would be reduced to below the single-source thresholds with best available mitigation measures, the project's contribution to pre-existing cumulative impacts would not be cumulatively considerable. The combined PM_{2.5} concentration from existing sources and construction of nearby projects² have a pre-existing cumulative health risk impact (refer to Table 3.1-8 of the Draft SEIR). As shown in Table 3.1-8 of the Draft SEIR, the project's annual PM_{2.5} concentration would be 0.26 (without mitigation) which would be below BAAQMD single-source threshold of 0.3 µg/m³. The required mitigation would further reduce the project-level annual PM_{2.5} concentration from 0.26 µg/m³ to 0.05 µg/m³ which is well below the single-source threshold.

Note that the Draft SEIR does not have any mitigation listed as "Mitigation Measure AQ-2". The City will require the Mitigation Monitoring and Reporting Plan (MMRP) to be enforced which includes MM AIR-1.1 (refer to Section 3.1 of the Draft SEIR) to minimize construction toxic air contaminants (TACs) emissions, including PM_{2.5}.

² Note that it was conservatively assumed that these nearby developments within 1,000 feet of the site would have overlapping construction. This approach provides an overestimate of the community risk and hazard levels because it assumes that maximum impacts from the nearby development occurs concurrently with the proposed project at the proposed project's maximum exposed individuals as mentioned in the footnote under Table 3.1-8 of the Draft SEIR.

To clarify, the Miro development (File Nos. SP17-009 and T16-056) was not included in the cumulative analysis for construction since construction of the Miro tower is complete. Therefore, only 10 nearby developments were included in the discussion. A text edit has been made in the cumulative discussion to provide clarification (see Section 5.0 for the text revision).

Comment B.3: The City should require a site-specific dust control plan that includes measures that go beyond the Air District's Basic and Enhanced Air Quality Construction Measures, including:

- Require the installation of advanced air filtration or the provision of portable air filtration units in nearby residences, at Little Einstein Montessori Preschool and at Horace Mann Preschool and Elementary School before construction begins.
- Limit the simultaneous occurrence of excavation, grading, and ground-disturbing construction activities.
- Hydroseed or apply non-toxic soil stabilizers to construction areas, including previously graded areas, that are inactive for at least 10 calendar days.
- Prohibit grading and other dust-generating activities on days with an Air Quality Index forecast of greater than 100 for particulates in the project area.
- Minimizing the amount of excavated material or waste materials stored at the site.
- Plant vegetative ground cover (e.g., fast-germinating native grass seed) in disturbed areas as soon as possible and water appropriately until vegetation is established.
- Increase frequency of wet power vacuuming street sweeping during periods of high ambient temperature, high wind events and / or low relative humidity.
- Record keeping documenting the frequency of watering on exposed surfaces, at minimum, the daily moisture content percentage as recorded by verified lab samples or moisture probe, and daily logs verifying at minimum, the use of daily wet power vacuuming street sweepers. Records should be kept on site and made available to the City and Air District staff.

Response B.3: The Standard Permit Conditions (pages 30-31 of the Draft SEIR), MM AIR-1.1 (pages 33, 35-36 of the Draft SEIR), and enhanced dust control measures listed in MM AIR-1.1 include the measures identified above, consistent with BAAQMD CEQA Air Quality Guidelines, with the exception of the following³:

1. requiring the installation of advanced air filtration or the provision of portable air filtration units in nearby residences, at Little Einstein Montessori Preschool and at Horace Mann Preschool and Elementary School before construction begins;
2. prohibiting grading and other dust-generating activities on days with an Air Quality Index forecast of greater than 100 for particulates in the project area;
3. minimizing the amount of excavated material or waste materials stored at the site; and
4. documenting the frequency of watering on exposed surfaces.

³ Note that the additional measures recommended by BAAQMD have not been adopted in BAAQMD's CEQA Guidelines and are not quantifiable with currently available modeling software.

The maximum modeled annual diesel particulate matter (DPM) and PM_{2.5} concentrations, which includes both the DPM and fugitive PM_{2.5} concentrations, were identified at nearby sensitive receptors to find the maximum exposed individual (MEI). The MEI was identified at the residence located on the second floor approximately 95 feet south of the project site.⁴ The project level PM_{2.5} concentration would be 0.05 µg/m³ at the MEI with implementation of MM AIR-1.1 and the identified Standard Permit Conditions, which is below the BAAQMD single-source threshold of 0.3 µg/m³. Any receptors located at distances greater from or in a different direction than the MEI would be exposed to less PM_{2.5} concentrations due to prevailing winds. The PM_{2.5} and health risk impact at the Little Einstein's Montessori Preschool is well below the BAAQMD thresholds without any of the identified mitigation measures. As such, there is no nexus to require additional mitigation measures for the preschool or Horace Mann Elementary School which, as noted by the commenter, is located 350 feet farther away from the project site than the preschool. While implementation of measures one through four above would not reduce the cumulative health risk impact as it is a pre-existing impact, the project applicant has agreed to include these measures as part of the project. The project applicant has agreed to offer temporary filtration units for the Town Park Towers building residents and at Little Einstein Montessori Preschool and Horace Mann Preschool and Elementary School. In addition, the project applicant will provide a telephone number and person to contact to all residences and businesses within 1,000 feet of the project site regarding dust complaints. The additional measures proposed by the applicant are included as text edits in Section 5.0 of this document.

Under cumulative conditions, the mitigated PM_{2.5} would be 1.24 µg/m³, which would exceed the BAAQMD Cumulative Source threshold of 0.8 µg/m³. As noted on pages 40 and 42 of the Draft SEIR, the PM_{2.5} concentration from existing sources alone exceed the cumulative threshold at 1.19 µg/m³, which results in a pre-existing cumulative health risk impact. According to BAAQMD, a project's contribution to cumulative health risks would be less than significant if the modeled risks from the project are reduced below the single-source threshold (refer to Response B.2).

Because the project would not represent an impact on its own, incorporates all enhanced measures from the BAAQMD CEQA Guidelines, and would not contribute particulate matter in sufficient quantity to be cumulatively considerable (i.e., a primary contributor), the project would not result in a cumulatively considerable contribution to the total cumulative PM_{2.5} impact (refer to Response B.2). As a result, the additional measures requested by BAAQMD are not required to reduce the impact to less than significant. However, the applicant has agreed to implement feasible additional recommended measures, and BAAQMD's comments will be provided to the decision-makers for consideration.

⁴ While the Town Park Towers residents are located closer to the project site, they were not identified as the MEI due to prevailing wind patterns.

Comment B.4: The City should require additional controls to mitigate construction-related exhaust emissions:

- Off-road construction equipment should be zero-emission, where available; the City should require commitments to zero-emission equipment in applicable bid documents, purchase orders, and contracts; successful contractors should demonstrate the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities. At minimum off-road diesel construction equipment should meet Tier 4 emissions standards.
- Medium and Heavy-Duty diesel on-road vehicles should be equipped with engine model year 2010 or newer, or powered by zero or near zero-emissions technology, as certified by the California Air Resources Board, whenever feasible.
- Provide electrical hook ups to the power grid, rather than using diesel-fueled generators, for electric construction tools, such as saws, drills, and compressors, and using electric tools whenever feasible.

Response B.4: Note that the MM AIR-1.1 requires Tier 4 equipment, at a minimum. If not available, construction equipment must be Tier 3 and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieves a 77 percent reduction in particulate matter exhaust. Furthermore, the use of alternative fueled or electric equipment and electricity-powered, stationary cranes and construction generator sets are also included as mitigation (refer to MM AIR-1.1 page 35). The additional measure requested by BAAQMD to use zero or near zero-emission technology for on-road vehicles is not required to reduce the project-level impact to less than significant. As discussed in Response B.2, BAAQMD CEQA Guidelines state that in instances where a pre-existing cumulative health risk impact exists, the project's individual contribution to that cumulative impact should be analyzed and if project health risks would be reduced to below the single-source thresholds with best available mitigation measures, the project's contribution to pre-existing cumulative impacts would not be cumulatively considerable. Furthermore, requiring the applicant to use zero-emission equipment would not be feasible since there is currently no zero-emission equipment (e.g., trenching, grading, paving, dozers, loaders, wheel dumps, etc.) readily available for the day to day operations of construction⁵, and it is unknown when zero emission construction equipment will be readily available. The applicant's general contractor confirmed that the manlifts, tower cranes, assist cranes for loading/unloading large materials, forklifts, and miscellaneous hand tools used will be electric. The additional measure will, however, be provided to the decision-makers for consideration.

⁵ Solar, Peter. Urban Catalyst. Personal communication. September 26, 2022.

Comment B.5: Air District Rules and Regulations

Additionally, the Project may be subject to additional Air District Rules and Regulations omitted by the Draft SEIR. These Rules and Regulations are as follows:

Air District Rule and Regulation	Description
Regulation 2, Permits, Rule 5: New Source Review of Toxic Air Contaminants	The purpose of this rule is to provide for the review of new and modified sources of toxic air contaminant (TAC) emissions in order to evaluate potential public exposure and health risk, to mitigate potentially significant health risks resulting from these exposures, and to provide net health risk benefits by improving the level of control when existing sources are modified or replaced.
Regulation 8, Organic Compounds, Rule 47: Air Stripping and Soil Vapor Extraction Operations	The purpose of this Rule is to limit emissions of organic compounds from contaminated groundwater and soil. The provisions of this Rule shall apply to new and modified air stripping and soil vapor extraction equipment used for the treatment of groundwater or soil contaminated with organic compounds.
Regulation 11, Hazardous Pollutants, Rule 2: Asbestos Demolition, Renovation and Manufacturing	The purpose of this Rule is to control emissions of asbestos to the atmosphere during demolition, renovation, milling and manufacturing and establish appropriate waste disposal procedures.

Response B.5: As mentioned on page 41 of Appendix B of the Draft SEIR, BAAQMD has adopted recommended procedures for applying the newest State of California Office of Environmental Health Hazard Assessment (OEHHA) guidelines as part of Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants. Exposure parameters from the OEHHA guidelines and the recent BAAQMD Health Risk Assessment (HRA) Guidelines were used in the HRA evaluation.

As part of the project's mitigation (MM HAZ-1.2), the project applicant shall work under regulatory oversight to determine if additional Phase II soil, soil vapor and groundwater investigations and remediation are required. Documents such as a Health and Safety Plan, Site Management Plan, Removal Action Plan or equivalent plans, as required by the Santa Clara County Department of Environmental Health (SCCDEH) shall be provided to the City of San José Director of Planning, Building, and Code Enforcement, or director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department. In addition, current occupants that use and/or store hazardous materials would be required to submit a closure plan that describes required closure activities, such as removal of remaining hazardous materials, cleaning of hazardous material handling equipment, decontamination of building surfaces, and waste disposal practices under regulatory oversight, and vapor extraction and/or vapor barrier shall be required, as determined by SCCDEH. Any air stripping and soil vapor extraction operations that occur on-site

which emit benzene, vinyl chloride, perchloroethylene, methylene chloride and/or trichloroethylene and/or have a total organic compound emission greater than 15 pounds per day shall comply with Regulation 8, Organic Compounds, Rule 47. Refer to MM HAZ-1.1 to MM HAZ-1.4, pages 103-104 of the Draft SEIR.

As part of the project's Standard Permit Conditions (refer to pages 104 and 105 of the Draft SEIR), all potentially friable asbestos-containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with California Occupational Safety and Health Administration (Cal/OSHA) standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure. Additionally, a registered asbestos abatement contractor shall be retained to remove and dispose of ACMs and materials containing more than one-percent asbestos are subject to BAAQMD regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

Comment B.6: Certain aspects of the project may require a permit from the Air District. Please contact Barry Young, Senior Advanced Projects Advisor, at (415) 749-4721 or byoung@baaqmd.gov to discuss permit requirements.

We encourage the City to contact Air District staff with any questions and/or to request assistance during the environmental review process. If you have any questions regarding these comments, please contact Mark Tang, Principal Environmental Planner, at mtang@baaqmd.gov.

Response B.6: This comment did not raise any further environmental issues under CEQA and therefore, no specific response is required. Refer to Response B.5 for additional information regarding compliance with BAAQMD rules and regulations.

C. Santa Clara Valley Transportation Authority (August 1, 2022)

Comment C.1: VTA appreciates the opportunity to comment on Draft Supplemental Environmental Impact Report (Draft SEIR) for the Icon-Echo Mixed-Use project. VTA has reviewed the document and has the following comments:

Land Use

VTA applauds the mix of uses and high density in a transit-rich downtown. VTA appreciates innovative projects like this one and looks forward to working with the City on this and other similar projects.

Response C.1: The commenter acknowledges the project is proposing a mixed-use development in downtown San José. No further response is required.

Comment C.2: Transit Impacts

VTA recommends the city work with us prior to and during construction to minimize any impacts to transit as Santa Clara Street is a primary transit route and serves many of our bus lines, as noted in the Local Transportation Analysis (LTA) appendix.

Response C.2: The City and the applicant will coordinate with VTA prior to and during construction to minimize transit impacts along Santa Clara Street. The project will be required to submit structural and shoring plans to VTA for coordination with the future BART tunnel to ensure no conflicts or impacts to the proposed BART project. The project will be required to comply with the Downtown Construction Guidelines (DCG). The DCG is for all work in the Public Right-of-Way to support the safe and orderly movement of people and goods by providing standards. The DCG serves as a guideline related to permits, coordination, and traffic control devices to entities performing work in downtown streets. A copy of the DCG can be found at: <https://www.sanjoseca.gov/home/showdocument?id=56303>. No further response is required.

Comment C.3: Bicycle Parking

The LTA should be updated to include the missing pages. The LTA currently stops mid-sentence on Page 30 discussing bicycle parking and amenities. VTA applauds the ample supply of bicycle parking and the design to and from the rooms. VTA requests the complete LTA be shared with us when available.

Response C.3: An error occurred when the appendices were inserted into the LTA. The missing page can be found on the last page of the LTA (page 90 of Appendix I of the Draft SEIR).

Comment C.4: VTA's BART Silicon Valley (BSV) Phase II Extension Project

In 2018, FTA and VTA released the Final Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR) for VTA's BART Silicon Valley Phase II Extension Project (BSV Phase II Project). VTA's Board of Directors certified the SEIR and approved the BSV Phase II Project in April 2018, and FTA issued the Record of Decision in June 2018. The SEIS/SEIR identified the tunnel, to be constructed as part of the BSV Phase II Project, would be adjacent to this proposed development (See Page 38, https://www.vta.org/sites/default/files/documents/VolumeIII_Appendix%2520B_Project%2520Plans%2520and%2520Profiles_feb20_2018.pdf). Tunnel easements, in which temporary or permanent structures would not be allowed, are required for the BSV Phase II Project.

VTA is currently in the process of advancing the design for the BSV Phase II Project with the tunnel and trackwork contractor, and procurement documents for the stations are under development. Utility relocations and site preparations are expected to begin in 2023, while heavy construction in this area is expected to follow in 2024.

The Draft SEIR mentions on Page 121 that the City of San José's General Plan states that "Noise studies are required for land use proposals where known or suspected loud intermittent noise sources

occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, mitigation will be implemented so that recurring maximum instantaneous noise levels do not exceed 50 dBA L_{max} in bedrooms and 55 dBA L_{max} in other rooms.” VTA’s BSV Phase II Project has received state and federal environmental clearance and is advancing its design into construction beginning in 2023. Please ensure appropriate mitigation is incorporated into the Icon-Echo Mixed-Use Project to address the General Plan requirement stated above.

Response C.4: As mentioned in the BSV Phase II Project’s hydrology and water quality report, there are two construction methods proposed for the tunnel portion of the BART extension, the Twin-Bore and Single-Bore Options.⁶ Under the Twin-Bore Option, the top of the tunnel would be, on average, 40 feet below the ground surface (bgs) while the top of the tunnel of the Single-Bore Option would be, on average, 70 feet bgs. Due to the depth at which the tunnel(s) would be located and the distance of the Northern Tower (which would have the residential units) to the tunnel, the ambient noise levels in the area of the residential tower would not change with operation of the rail line and future residences on-site would not be affected by the BSV Phase II Project. As discussed in the BSV Phase II Project’s noise and vibration assessment, if the Downtown San José Station East option (Third to Sixth Streets) moves forward, the projected noise level is an eight-hour equivalent noise level (L_{eq}) of 79 A-weighted sound level (dBA), which does not exceed the 85 dBA criterion for commercial spaces (including offices). Even with implementation of the identified mitigation in the noise and vibration assessment, the BSV Phase II Project concluded that construction noise would result in a significant unavoidable impact for the Downtown San José Station East option. The operational groundborne noise and vibration impacts at 49 North Fourth Street was estimated to be 37 to 41 dBA (without mitigation) for groundborne noise and 67 to 71 velocity in decibels (VdB) (without mitigation) for vibration. While the vibration would not exceed the Federal Transit Administration’s (FTA’s) groundborne vibration (GBV) criteria of 75 VdB, the noise levels at 49 North Fourth Street would exceed the FTA’s groundborne noise (GBN) criteria of 40 dBA. With the isolated slab track (for the twin-bore option), the FTA GBN criteria would not be exceeded. The groundborne noise impacts for the single-bore option would be less than for the twin-bore option due to the increased depth of the single-bore option.

Furthermore, per the *California Building Industry Association v. Bay Area Air Quality Management District*, 62 Cal. 4th 369 (*BIA v. BAAQMD*), CEQA does not require lead agencies to consider the effect the environment will have on future residents and users of a project. Consistent with General Plan Policy EC-1.1 and the City’s Standard Permit Condition to ensure compliance with the California Building Codes (CBC) and City noise standards (page 140 of Draft SEIR), the residential tower will be required to achieve 45 dBA for the interior spaces which would not exceed the rail line threshold of 50 dBA L_{max} for bedrooms and 55 dBA L_{max} in other rooms as defined in General Plan Policy EC-1.9. For these reasons, no additional

⁶ WRECO. *VTA’s BART Silicon Valley – Phase II Extension Project Hydrology and Water Quality Technical Report*. November 2016.

mitigation would be required to reduce interior noise from the BSV Phase II Project.

Comment C.5: Appendix-A Initial Study mentions on Page 47 Table 4.7-1 four active faults near the project site. However, the Silver Creek fault near the project site needs to be added to this list and considered when scoping, designing, and evaluating the Icon-Echo Project.

As noted on pages 49-50 of Appendix A, the project design will be completed in conformance with current codes and the required site-specific geotechnical investigation which will address all potential geologic hazards. The Silver Creek fault has been added to Table 4.7-1, see Section 5.0 of this document for the proposed text amendment. These text changes do not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR.

Comment C.6: The Draft SEIR for the Icon-Echo Mixed-Use Project (June 2022, City of San Jose File Numbers SP21-031, T21-033, & ER21-134, and State Clearinghouse Number 2021090554) does not include foundation/excavation or non-preliminary off-site utilities drawings; therefore, VTA cannot comment on those.

Response C.6: The foundation/excavation and non-preliminary off-site utilities drawings can be provided upon request. Please contact Elizabeth Koki, Department of Public Works Senior Civil Engineer, at Elizabeth.Koki@sanjoseca.gov.

Comment C.7: Because of the proximity between this proposed development and the BSV Phase II Project and the possibility of concurrent construction, VTA requests the development's design (including but not limited to the building's foundation system, shoring and support of excavation plans, geotechnical reports, structural drawings, and non-preliminary off-site utilities plans), as well as construction activities (including but not limited to haul routes, construction sequence, schedule, logistics, etc.) be shared/discussed with VTA. VTA's review of these documents as they advance and become available will be critical, including to ensure that the structures within the tunnel easement are not compromised, potentially causing damage and or other safety concerns. Additionally, as projects may be built concurrently, construction activities such as haul routes, times, logistics, etc. should be further discussed as design and construction progress. VTA looks forward to coordination between VTA, the City of San José, and the developer from the initial planning and design phases through construction.

Thank you again for the opportunity to review this project. If you have any questions, please do not hesitate to contact me at 408-321-5830 or lola.torney@vta.org.

Response C.7: The City and the applicant will coordinate with VTA during the initial planning and design phases through construction to avoid damage and/or other safety concerns due to potential concurrent construction. Refer to Response C.2. No further response is required.

ORGANIZATIONS, BUSINESSES, AND INDIVIDUALS

D. Canyon Consulting, LLC (July 1, 2022)

Comment D.1: miSmin Tuuhis [Good Day]

Kan rakat Canyon Sayers-Roods. I am writing this on behalf of the Indian Canyon Band of Costanoan Ohlone People as requested, responding to your letter. As this project's Area of Potential Effect (APE) overlaps or is near the management boundary of a potentially eligible cultural site, I am interested in consulting and voicing our concerns. With some instances like this, usually we recommend that a Native American Monitor and an Archaeologist be present on-site at all times during any/all ground disturbing activities. The presence of a Native monitor and archaeologist will help the project minimize potential effects on the cultural site and mitigate inadvertent issues. Canyon Consulting, LLC has numerous Native Monitors available for projects such as this, if applicable, we recommend a Cultural Sensitivity Training at the beginning of each project. This service is offered to aid those involved in the project to become more familiar with the indigenous history of the peoples of this land that is being worked on.

Response D.1: The commenter is recommending Native American monitoring and an archaeologist be present on-site during all ground disturbing activities and Cultural Sensitivity Training be held at the beginning of each project. As mentioned on page 142 of the Draft SEIR, the City held consultation meetings with representatives of the Tamien Nation on December 9, 2021 and March 10, 2022 in response to a formal Assembly Bill (AB) 52 request for consultation. The City contacted Canyon Consulting, LLC. on July 28, 2022 in response to the comment letter received. In the email correspondence, the City provided the commenter with the NOP, NOP proof of delivery, and a summary of the consultation that occurred between the City and Chairwoman Quirina Geary of the Tamien Nation. In addition, while the 30-day window to request consultation from the Notice of Availability circulated on June 17, 2022, has passed, the City has agreed to make an exception. No response has been received since the City's email correspondence. Due to the site's proximity to a known village site, mitigation measures were developed through the consultation process with Tamien Nation which include sensitivity training and Native American monitoring (refer to MM TCR-1.1 and MM TCR-1.2 of the Draft SEIR). In addition, MM CUL-1.1 (preliminary investigation) and CUL-1.2 (treatment plan) identified in Section 3.3, Cultural Resources, and reference in Section 3.7, Tribal Cultural Resources, of the Draft SEIR were developed in consultation with Tamien Nation.

Comment D.2: Canyon Consulting is a strong proponent of honoring truth in history, when it comes to impacting Cultural Resources and potential ancestral remains, we need to recognise the history of the territory we are impacting. We have seen that projects like these tend to come into an area to consult/mitigate and move on shortly after - barely acknowledging the Cultural Representatives of the territory they steward and are responsible for. Because of these possibilities, we highly recommend that you receive a specialized consultation provided by our company as the project commences, bringing in considerations about the Indigenous peoples and environment of this territory that you work, have settled upon and benefit from.

As previously stated, our goal is to Honor Truth in History. And as such we want to ensure that there

is an effort from the project organizer to take strategic steps in ways that #HonorTruthinHistory. This will make all involved aware of the history of the Indigenous communities whom we acknowledge as the first stewards and land managers of these territories.

Potential Approaches to Indigenous Cultural Awareness/History:

- Signs or messages to the audience or community of the territory being developed. (ex. A commemorable plaque, page on the website, mural, display, or an Educational/Cultural Center with information about the history/ecology/resources of the land)
- Commitment to consultation with the Native Peoples of the territory in regards to presenting and messaging about the Indigenous history/community of the land (Land Acknowledgement on website, written material about the space/org/building/business/etc, Cultural display of cultural resources/botanical knowledge or Culture sharing of Traditional Ecological Knowledge – Indigenous Science and Technology)
- Advocation of supporting indigenous lead movements and efforts. (informing one's audience and/or community about local present Indigenous community)

We look forward to working with you.

Tumsan-ak kannis [Thank You]

Response D.2: As mentioned in MM TCR-1.1 of the Draft SEIR (see page 143), an Archaeological Monitoring Contractor Awareness Training, which shall be facilitated by a qualified archaeologist in coordination with a Native American representative from a California Native American tribe that has consulted on the project, is registered with the Native American Heritage Commission (NAHC) for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall be held prior to ground disturbance. If any tribal cultural resources (TCRs) are discovered, the project applicant shall implement the Standard Permit Conditions and mitigation measures listed on pages 89-91 of the Draft SEIR. In addition, if any TCRs are discovered, the project applicant, in consultation with the Native American representative from the California Native American tribe that has consulted on the project for the City of San José and meets the requirements summarized above, shall coordinate to develop an interpretive program that may include commemoration in addition to the measures already included to the satisfaction of the tribal representative.

E. Adams Broadwell Joseph & Cardozo (August 1, 2022)

Comment E.1: We are writing on behalf of Silicon Valley Residents for Responsible Development (“Silicon Valley Residents”) to provide comments on the Draft Supplemental Environmental Impact Report (“DSEIR”) prepared by the City of José (“City”) for the Icon-Echo Mixed-Use Project (File Nos. SP21-031/ER21-134, T21-033; SCH 2021090554) (“Project”) proposed by Urban Catalyst (“Applicant”).

The Project proposes to construct a 21-story office/retail tower and a 27-story, 415-unit residential tower connected by a podium on floors 1-4. The Project calls for approximately 525,000 square feet of commercial space and 8,500 square feet of retail space. One level of below-grade parking is

included with a total of 1,151 parking spaces. The following addresses are associated with the project site: 128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street (Accessor's Parcel Number 467-20-060), 147 East Santa Clara Street (Accessor's Parcel Number 467-20-079), 49 North Fourth Street (Accessor's Parcel Number 467-20-081), and 60 North Third Street (Accessor's Parcel Number 467-20-080).

Several discretionary approvals will be required to implement the Project: Special Use Permit; Demolition, Grading, and Building Permit(s); Vesting Tentative Map; Historic Preservation Permit; Department of Public Works Clearances; and Public Street Improvement Permit.

We reviewed the DSEIR and its technical appendices with the assistance of air quality and health risk experts Matt Hagemann, P.G, C.Hg. and Paul E. Rosenfeld, PhD from Soil / Water / Air Protection Enterprise ("SWAPE"). The City must separately respond to these technical comments.

Based upon our review of the DSEIR and supporting documentation, we conclude that the DSEIR fails to comply with the requirements of CEQA. As explained more fully below, the DSEIR fails to provide a clear project description and accurate environmental baseline upon which to measure the Project's reasonably foreseeable impacts. The DSEIR also fails to accurately analyze, disclose, and mitigate the Project's air quality, greenhouse gas ("GHG"), hazards, noise, transportation, and growth-inducing impacts. As a result of its shortcomings, the DSEIR lacks substantial evidence to support its conclusions and fails to properly mitigate the Project's significant environmental impacts. The City cannot approve the Project until the errors and omissions in the DSEIR are remedied, and a revised DSEIR is recirculated for public review and comment which fully discloses and mitigates the Project's potentially significant environmental impacts.

I. STATEMENT OF INTEREST

Silicon Valley Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. Residents includes the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of San José and Santa Clara County.

Individual members of Silicon Valley Residents live, work, recreate, and raise their families in the City and in the surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

In addition, Silicon Valley Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment

opportunities.

II. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which the DSEIR satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. CEQA requires that an agency analyze potentially significant environmental impacts in an EIR. The EIR should not rely on scientifically outdated information to assess the significance of impacts, and should result from “extensive research and information gathering,” including consultation with state and federal agencies, local officials, and the interested public. To be adequate, the EIR should evidence the lead agency’s good faith effort at full disclosure. The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” “Thus, the EIR protects not only the environment but also informed self-government.”

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.” If a project has a significant effect on the environment, the agency may approve the project only upon a finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible,” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081.

As these comments will demonstrate, the DSEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails in significant aspects to perform its function as an informational document that is meant “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment” and “to list ways in which the significant effects of such a project might be minimized.” The DSEIR also lacks substantial evidence to support the City’s proposed findings that the Project will not result in any significant, unmitigated impacts.

Response E.1: The City of San José prepared the Draft SEIR for the referenced project in compliance with the requirements of CEQA and the CEQA Guidelines [Guidelines Section 15121(a) and Public Resource Code Section 21083]. Recirculation of an EIR is required when significant new information is added to the EIR (CEQA Guidelines Section 15088.5). As discussed in the responses to specific comments on the Draft SEIR below, the comments raised in this letter do not identify any new or more significant impacts, or new feasible project alternatives or mitigation measures considerably different than identified in the Draft SEIR. For these reasons, the Draft SEIR does not need to be recirculated. This comment does not raise any specific issues about the adequacy of the Draft SEIR. No further response is required.

Comment E.2: III. THE PROJECT DESCRIPTION IS INADEQUATE

The DSEIR does not meet CEQA's requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that "an accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." CEQA requires that a project be described with enough particularity that its impacts can be assessed. Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review. Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.

CEQA Guidelines section 15378 defines "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." "The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval." Courts have explained that a complete description of a project must "address not only the immediate environmental consequences of going forward with the project, but also all "reasonably foreseeable consequence[s] of the initial project." "If a[n]...EIR...does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final EIR is inadequate as a matter of law."

Response E.2: This comment does not raise any specific issues about the adequacy of the project description in the Draft SEIR. See Responses E.3-E.47 below for responses to specific comments.

Comment E.3: A. The Project Does Not Have A Clear Description of On-site Solar Facilities

The Project's Initial Study states that "[a]lthough the proposed project does not include on-site renewable energy resources, the project would be designed and constructed in compliance with the City of San José's Private Sector Green Building Policy (Council Policy 6-32), Green Building Ordinance, Energy and Water Building Performance Ordinance, and Reach Code and includes solar panels and/or solar hot water panels." And the Project's DSEIR states that "[s]olar panels, air cooled chillers, a cooling tower, and air source heat pumps are proposed on the roof of the residential building." But neither of these documents disclose the number or capacity of the proposed solar panels, chillers, a cooling tower, and air source heat pumps. As a result of this unclear project description, the DSEIR does not fulfill its purpose as an informational document. The consequence of this lack of clarity regarding solar facilities is that the Project's consistency with GHG reduction measures is unsubstantiated.

Response E.3: CEQA Guidelines Section 15124 states that a project description shall contain 1) the precise location and boundaries of the proposed project shown on a detailed map and the location of the project on a regional map, 2) a statement of the objectives sought by the proposed project., 3) a general description of the project's technical and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities, 4) a statement briefly describing the intended uses of the EIR, and 5) all decisions subject to CEQA.

With any project, not all project details are necessarily known at the time the environmental review is prepared. It is common for building mechanics such as heating, ventilating, and air conditioning (HVAC), generators, etc. to not be fully designed prior to the building permit stage when projects must go through building code review. The mechanical equipment which could result in air pollutant emissions, noise, and energy use were accounted for in the analysis based on assumptions outlined in the Air Quality and Noise reports (Appendices B and F of the Draft SEIR). The number and capacity of the proposed solar panels is irrelevant because they do not use electricity from the grid, generate air pollutants, or generate perceptible noise. As a result, the installation of solar panels would have no direct environmental effect as a result of the project. Furthermore, projects need to be solar ready to conform to the City's Reach Code, and the City's requirement for projects to be "solar-ready" exceeds the 2019 California Green Building Standards. To comply with the City's Reach Code which requires all projects be solar ready, the project proposes solar electrical generation which would be installed per the requirements of the Reach Code. In addition, refer to Responses E.14 and E.20 regarding the applicant's commitment to enroll in SJCE's TotalGreen (100 percent renewables). Therefore, the project description provides sufficient information to show that the project is consistent with the GHGRS.

Consistent with the CEQA Guidelines, the project description has sufficient detail to assess the potential environmental effects of the proposed project.

Comment E.4: IV. THE DSEIR FAILS TO ADEQUATELY ESTABLISH THE ENVIRONMENTAL SETTING

CEQA requires that a lead agency include a description of the physical environmental conditions in the vicinity of the Project as they exist at the time environmental review commences. As numerous courts have held, the impacts of a project must be measured against the "real conditions on the ground." Accordingly, the CEQA Guidelines provide that "[a]n existing conditions baseline shall not include hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline."

The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts. Use of the proper baseline is critical to a meaningful assessment of a project's environmental impacts. An agency's failure to adequately describe the existing setting contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting.

Baseline information on which a lead agency relies must be supported by substantial evidence. The CEQA Guidelines define "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion." "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts ... [U]nsupported opinion or narrative [and] evidence which is clearly inaccurate or erroneous ... is not substantial evidence."

A. The DSEIR's Transportation Impacts Baseline is Incorrect

The DSEIR's Transportation Analysis discloses that the Project would generate 4,753 daily trips. But the DSEIR takes credit for 1,264 trips from existing uses when analyzing the vehicle miles travelled ("VMT") generated by the Project. The DSEIR's Local Transportation Analysis states that these current uses include an 8-pump gas station, a 6,860-sf church, and 13,500 sf of retail space. The below excerpt from the DSEIR's Local Transportation Analysis shows the estimated number of trips from each current use. This information constitutes the environmental baseline.

Proposed Project Trips (After Reductions)			4,753				
Existing Land Uses							
ITE LU # 945 - Gas Station with Convenience Market ¹	8 Vehicle Fueling Positions	205.36	1,643	12.47	51%	49%	
Passby Reduction ⁷		56%	-920	62%			
ITE LU # 560 - Church ¹	6,860 Square Feet	6.95	48	0.33	60%	40%	
ITE LU # 820 - Shopping Center ¹	13,500 Square Feet	37.75	510	0.94	62%	38%	
Passby Reduction ⁷			-17				
Total Existing Trips			1,264				
Net Project Trips (Proposed - Existing)			3,489				

But this baseline is flawed because it does not resemble existing conditions at the time environmental review commenced.

The 8-pump gas station the DSEIR estimates to generate 723 trips daily (1,643 trips minus a 920 trip pass by reduction) is located at 95 North Fourth Street. The DSEIR discloses that this location was formerly a gas station, but does not disclose how long it has been since the building was used as a gas station. But an online search reveals the building was available for lease as early as 2014. Further, the building has been used as a tattoo shop for at least four years. CEQA requires that the baseline reflect conditions as they exist at the time environmental review commences, but the DSEIR's baseline has not been accurate for at least four years. To accurately represent existing conditions at 95 North Fourth Street, the DSEIR's transportation analysis may only take credit for trips generated by a tattoo shop. The consequence of this erroneous baseline is an overestimation of the trips generated by existing uses, as a tattoo shop generally generates fewer trips than a gas station. As a result, the DSEIR discloses a lower transportation impact than can be supported by substantial evidence.

Response E.4: The baseline for the project was correctly stated in the SEIR and associated technical reports. The commenter is incorrect that the gas station referenced as part of the existing condition is the building located at 95 North Fourth Street. As noted on page 4 of the Draft SEIR, the project site is currently developed with a gas station, church, surface parking lot, and three commercial buildings. The gas station is currently in operation at the south end of the project site (147 East Santa Clara Street) as can be seen on Figure 2.1-3 of the SEIR and Photo 1 (page 21) of Appendix A. Therefore, the baseline traffic conditions associated with the gas station are correct. Furthermore, trip generation of existing uses is not used to determine transportation impacts for analysis of VMT associated with projects, consistent with current impact analysis methodology in the CEQA Guidelines.

The building referenced by the commenter (the former gas station) is at the north end of the project site and is one of the three commercial buildings noted in the project

description. It seems the commenter is referencing information in the Cultural Resources section of the Draft SEIR (Section 3.3), which notes that former operations of the commercial building at 95 North Fourth Street included operation as a gas station when summarizing the history of the site as part of the analysis of impacts to historic resources.

Comment E.5: The DSEIR estimates that First Presbyterian Church, located at 49 North Fourth Street generates 48 trips daily. The DSEIR states the building was used as a church until 2019, but now provides services for the disadvantaged. However, the DSEIR’s transportation analysis models the trips generated by the building as a church. The DSEIR must analyze existing conditions as they existed when environmental review commenced – September 2021 (the date of the Notice of Preparation) – so it must remodel this building’s trips generated.

Response E.5: The current use of 49 North Fourth Street does not change the baselines conditions assumption. The building is currently used to provide services for the disadvantaged, and the building could continue to operate as a church at any time without permits or improvements. As such, it is appropriate to utilize the trip rate for the building as it has been historically and recently used. This is not a hypothetical condition. Consistent with *North County Advocates v. City of Carlsbad*, (2015), 241 Cal. App. 4th 94, CEQA provides some flexibility for a lead agency to employ a baseline that assumes conditions based on recent historical usage that was present for some time and could be present again without further discretionary actions by the lead agency or another public agency. A review of the City of San José website (www.sjpermits.org) shows no permits for modification of the building since closure of the church, meaning the physical conditions of the property are the same as they were when the building was occupied as a church. For all these reasons, it is reasonable for the City to assume use of the building as a church for the purposes of establishing the baseline.

Comment E.6: The DSEIR estimates that the 13,500 sf of retail space of a one-story commercial building at 77 North Fourth Street generates 510 trips a day. The DSEIR’s Local Transportation Analysis treats this building as a “shopping center.” This trip generation rate may be erroneous, as it is unclear whether this commercial building was ever used as a shopping center. The DSEIR does not provide information on the building’s existing uses or historical uses. But even if the building could be used as a shopping center, the CEQA Guidelines provide that “[a]n existing conditions baseline shall not include hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline.” Since the DSEIR fails to substantiate its assessment of the existing building as a shopping center, its baseline is not supported by substantial evidence. The consequence of this flaw is that it likely overestimates the credit the Project takes for trips generated by existing uses, masking the Project’s impacts.

Response E.6: As noted on page 106 of Appendix A of the Draft SEIR and page 9 of Appendix I of the Local Transportation Assessment (LTA), the project trips were estimated based on land use categories from the Institute of Transportation Engineers (ITE) Trip Generation Manual. Within the ITE manual, each land use has a description of the uses that would fall under each category. The commenter is implying that the “shopping center” category means only a large shopping center.

This is not factually correct. This ITE category is a generalized commercial category which is used for a variety of large and small commercial developments. All other retail land use categories in the ITE are use specific and would not apply for this project. Similarly, the proposed commercial square footage in the office tower is also classified as shopping center. This is consistent with all other San José commercial projects where specific ITE land uses do not apply. The building at 77 North Fourth Street is currently vacant but has been occupied in the recent past by various commercial businesses. See Response E.4.

Comment E.7: Because of this unsubstantiated baseline, the DSEIR's significance determinations regarding transportation impacts are not supported by substantial evidence. Further, the DSEIR fails as an informational document by failing to disclose the existing uses of the Project site, and to accurately disclose the full extent of the Project's impacts.

The City might argue that the DSEIR's unsubstantiated baseline is irrelevant because Downtown Strategy 2040 EIR provides project-level clearance for VMT impacts for projects that meet certain screening criteria. But the Project must still comply with local land use regulations. General Plan Policy TR-5.3 states that "Development projects' effects on the transportation network will be evaluated during the entitlement process and will be required to fund or construct improvements in proportion to their impacts on the transportation system." This policy requires the accurate disclosure of the trips generated by the Project. Moreover, even analysis added for informational purposes, as the Initial Study claims, must be accurate in order for the environmental document to fulfill its purpose as an informational document.

Response E.7: As the commenter correctly points out, the Downtown Strategy 2040 Final EIR provides project-level clearance for vehicle miles traveled (VMT). Furthermore, the trip generation estimates are irrelevant (particularly for the existing land uses) when determining the VMT of a proposed project as VMT is compared to the Citywide average and not the existing uses of an individual site. Therefore, the conclusion that the project would have a less than significant transportation impact is correct.

With regard to the operational assessment, which is provided for information purposes only, since project-level clearance is provided in the Downtown Strategy 2040 Final EIR, those conclusions are also correct as the appropriate trip rates were applied to all existing and proposed land uses as explained in Responses E.4-E.6.

Comment E.8: **V. THE DSEIR FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS**

An EIR must fully disclose all potentially significant impacts of a project, and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by law. Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions. In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not "uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."

A. The DSEIR's Assessment of Air Quality and Greenhouse Gas Emissions is Not Supported by Substantial Evidence.

The DSEIR concludes that the Project's construction and operational criteria air pollutant emissions will be less than significant. These conclusions rely on emissions calculated with CalEEMod Version 2020.4.0 modeling software. SWAPE reviewed the DSEIR's CalEEMod analysis and found that several modeling inputs were either unsubstantiated, or inconsistent with information disclosed elsewhere in the DSEIR. As a result, the Project's construction and operational emissions are underestimated, and unsupported by substantial evidence.

First, the DSEIR fails to substantiate the number of Saturday and Sunday operational vehicle trips generated by the Project. CalEEMod uses the operational vehicle trip rates to calculate the emissions associated with the operational on-road vehicles. The DSEIR, in its transportation analysis, states that the Project is expected to generate 4,753 daily operational vehicle trips. But SWAPE's review of the CalEEMod output files demonstrates that the operational emissions model includes only 2,157.83 Saturday and 1,317.69 Sunday operational vehicle trips. As a result, SWAPE concludes that the Saturday and Sunday vehicle trips are underestimated by 2,595.17 and 3,435.31 trips, respectively. By underestimating operational daily trip rates, the DSEIR fails to analyze and disclose the full extent of the Project's impacts on air quality and climate change.

Response E.8: The City's standard methodology for estimating trip generation is to calculate weekday trips with a focus on peak hour trips. The Air Quality Analysis for the Draft SEIR used the correct trip generation rates for the proposed project. As described in the Air Quality Analysis (Appendix B of the Draft SEIR), the weekday rates were adjusted for Saturdays and Sundays per the ratios assigned by CalEEMod, as the traffic analysis does not provide estimates for weekends or holidays as these days have lower trip rates. The number of weekday trips used is consistent with the project Transportation Analysis.

The commenter states that "...several modeling inputs were either unsubstantiated, or inconsistent with information disclosed elsewhere in the DSEIR." However, the comment does not state what these inconsistencies are, if any. Therefore, no further

response is required.

Comment E.9: Second, SWAPE’s review of the CalEEMod output files demonstrates that the DSEIR’s modeling includes several changes to the default wastewater treatment system percentages. The DSEIR’s model assumes that the Project’s wastewater would be treated 100% aerobically. The City’s justification for this assumption is: “WWTP 100% aerobic no septic tanks or lagoons in downtown San José.” However, this justification is incorrect. The DSEIR states that “[w]astewater treatment in San José is provided by the San José-Santa Clara Regional Wastewater Facility.” SWAPE’s review of the San José-Santa Clara Regional Wastewater Facilities treatment process reveals the use of anaerobic bacteria in the digesters phase of treatment. Thus, the assumption that the Project’s wastewater would be treated 100% aerobically is incorrect. SWAPE explains that because each type of wastewater treatment system is associated with different GHG emission factors, the DSEIR’s flawed model may underestimate the Project’s GHG emissions and should not be relied upon to determine Project significance.

As a result of these errors, the DSEIR’s conclusions are not supported by substantial evidence. The DSEIR also fails as an informational document. An updated EIR must be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on air quality and climate change.

Response E.9: CalEEMod predicts only GHG emissions from wastewater treatment. The treatment of wastewater does not affect air pollutant emissions, which CalEEMod was used to estimate. GHG emissions were not quantified for the project but were addressed based on the City’s adopted GHG Reduction Strategy. In addition, as stated on pursuant to CEQA Guidelines Sections 15064(h)(3), 15130(d), and 15183(b), a project’s incremental contribution to a cumulative GHG emissions effect may be determined not to be cumulatively considerable if it complies with the requirements of the GHGRS.

With regard to the model inputs, the CalEEMod model provides three options to enter for wastewater treatment: (1) through septic systems, (2) anerobic treatment, and (3) facultative lagoons. Septic systems and facultative lagoons are aerobic treatment techniques that typically occur in rural areas and not in San José. The project plans do not include this treatment type and project generated wastewater would be sent to the San José Wastewater Treatment plant. It is correct that biosolids removed from the wastewater treatment would be processed using anerobic digesters. Nevertheless, these emissions are captured internally at the treatment plant and not released as emissions into the environment.

Therefore, the modeling of wastewater treatment emissions does not affect the findings contained in the DSEIR for GHG emissions for the reasons summarized above.

Comment E.10: B. The DSEIR's Discussion of the Project's Greenhouse Gas Impacts is Not Supported by Substantial Evidence.

Under the CEQA Guidelines, a lead agency must analyze a project's impacts on GHG emissions. The Guidelines provide that "[i]n determining the significance of impacts, the lead agency may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change and its conclusion that the project's incremental contribution is not cumulatively considerable." In 2020, the City adopted a Greenhouse Gas Reduction Strategy ("GHGRS") that outlines the actions the City will undertake to achieve its proportional share of State greenhouse gas emission reductions for the interim target year 2030. Appendix H states that "a project's incremental contribution to a cumulative GHG emissions effect may be determined not to be cumulatively considerable if it complies with the requirements of the GHGRS." The GHGRS requires (1) all projects to demonstrate consistency with the Envision San José 2040 General Plan's relevant policies for Land Use & Design, Transportation, Green Building, and Water Conservation, (2) demonstrate consistency with the GHGRS reduction strategies listed in Table B of the GHGRS or document why the strategies are not applicable or are infeasible, and (3) provide an explanation of additional or alternative proposed GHG mitigation measures. Here, the DSEIR has not demonstrated that the Project complies with the GHGRS. As a result, the DSEIR's less-than-significant impact conclusion should not be relied upon.

Response E.10: As discussed in the San José Greenhouse Gas Reduction Strategy 2030 Update Addendum⁷ (page 33), the City has recorded a decreased in transportation emissions as a result of reduced annual VMT, reduced single vehicle occupancy, and other factors. Directly related to this, downtown development, particularly high-density, mixed-use buildings in transit supportive locations result in reduced VMT and increased transit use compared to comparably sized development in outlying areas without transit access. This in turn results in significantly lower GHG emissions per capita. The proposed project is part of the planned development of downtown San José under the Downtown Strategy 2040. The Downtown Strategy 2040, in turn, is part of planned growth assumed in the 2040 General Plan. As discussed in the Downtown Strategy 2040 Final Integrated EIR, development consistent with the Downtown Strategy 2040 would have a less than significant impact on GHG emissions under the 2030 substantial progress threshold. Because the proposed project is consistent with the assumed development and land use designations of the project site and part of the planned development under the Downtown Strategy 2040, the project's GHG impact is also less than significant.

The City developed the 2030 Greenhouse Gas Reduction Strategy (2030 GHGRS) checklist to assist projects in showing compliance with the 2030 GHGRS. In addition to being consistent with the land use and development assumptions in the GHG analysis in the Downtown Strategy 2040 Final Integrated EIR, the City evaluated the project based on substantial compliance with the 2030 GHGRS. The responses to the checklist, in concert with the other project specific information provided to the City

⁷ City of San José. *San José Greenhouse Gas Reduction Strategy 2030 Update Initial Study/Addendum*. August 2020.

through the development review process and included in the public record, is considered by the City when determining consistency.

As stated in the 2030 GHGRS Checklist (Appendix H of Draft SEIR), implementation of *applicable* reduction actions in new development projects will help the City achieve incremental reductions toward its target. Substantial compliance with applicable measures in the GHGRS demonstrates overall compliance with the strategy.

Responses to specific issues raised by the commenter regarding the checklist are provided below.

Comment E.11: i. The DSEIR Fails to Demonstrate Consistency with the Envision San José 2040 General Plan

The DSEIR does not demonstrate consistency with Envision San José 2040 General Plan Goal MS-2.2, which states: “Encourage maximized use of on-site generation of renewable energy for all new and existing buildings.” The DSEIR’s Compliance Checklist states:

“Rooftop areas on this project are used for mechanical equipment, outdoor open space for tenants and stormwater catchment. Solar hot water or solar electrical generation will be applied in areas not covered by these uses”

This response is insufficient because by simply stating that solar panels would occupy open rooftop space, the Project commits to the bare minimum requirements. The response also fails to include any of the analysis implicitly required by MS-2.2: the DSEIR does not state how many solar panels are proposed to be installed, nor does it analyze how many solar panels are necessary to maximize on-site generation of renewable energy. The DSEIR also fails to commit to maximizing on-site generation of energy, merely stating that some solar facilities will be installed in available rooftop areas, without disclosing how much area, if any, will be available for such uses. As such, the Compliance Checklist fails to demonstrate how the Project would encourage maximized use of on-site renewable energy for all new and existing buildings.

Further, the inclusion of rooftop solar is not included as a mitigation measure or a binding condition of approval, making its inclusion speculative and unenforceable. Environmental documents, including SEIRs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.” Inconsistency with the Envision San José 2040 General Plan would constitute a significant GHG impact, according to the terms of the GHGRS. Since the Project does not require rooftop solar, the DSEIR fails to demonstrate consistency with MS-2.2.

Response E.11: As the commenter notes, General Plan Policy MS-2.2 states “Encourage maximized use of on-site generation of renewable energy for all new and existing buildings.” As noted on page 13 of the Draft SEIR, the project proposes solar panels on the roofs of both the residential and office buildings. The checklist (Appendix H of the SEIR) also notes that available rooftop areas will be used for solar electrical generation and installed per the requirements of the Reach Code. The

commenter states that “the project commits to the bare minimum requirements” and that the response “fails to include any of the analysis implicitly required”. First, this policy does not imply that analysis is required. Second, the project plans show the rooftop configurations of each tower with the available area for solar installation and, as noted in Response E.3, building mechanics such as HVAC, generators, etc. are commonly not fully designed prior to the building permit stage. Third, as written, the policy *encourages* but does not mandate or enforce any measurable use of renewable energy generation. Fourth, only “solar readiness” is required by the Reach Code, and this City requirement exceeds (i.e., “reaches beyond”) the 2019 California Green Building Standards. Compliance with the City’s Reach Code is reviewed during the building permit phase. To comply with the City’s Reach Code, solar electrical generation is proposed as part of the project. Therefore, there is no nexus for solar readiness to be included as a mitigation measure. The project is consistent with the intent of this policy.

Comment E.12: The DSEIR does not demonstrate consistency with MS-2.3, which states: “Encourage consideration of solar orientation, including building placement, landscaping, design and construction techniques for new construction to minimize energy consumption.” The DSEIR’s Compliance Checklist responds: “Building will have flat roofs to accommodate appropriate solar orientation.” This response is insufficient because it does not demonstrate consideration of building placement, landscaping, design and construction techniques to minimize energy consumption. The DSEIR’s response must be revised to include analysis of how the Project’s building placement, landscaping, design and construction techniques can minimize energy consumption. SWAPE explains that as a result of these errors, the DSEIR fails to demonstrate consistency with MS-2.3.

Response E.12: As the commenter notes, General Plan Policy MS-2.3 states “Encourage consideration of solar orientation, including building placement, landscaping, design and construction techniques for new construction to minimize energy consumption.” The applicant responds to the checklist question relative to the orientation for the proposed rooftop solar installation note that the buildings will have flat roofs to accommodate solar orientation appropriate for the project site. Other aspects of the project, including landscaping, design and construction techniques are addressed through required consistency with all applicable energy reduction standards during the building permit process, as noted in Response E.11. As written, the policy *encourages* but does not mandate or enforce any requirements for solar orientation, including building placement, landscaping, design and construction techniques for new construction to minimize energy consumption. The project is consistent with the intent of this policy.

Comment E.13: The DSEIR does not demonstrate consistency with MS-2.11, which states:

Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).

In response, the DSEIR's Compliance Checklist states that the Project would comply with the Green Building Ordinance and aim to achieve LEED Silver certification. This response is insufficient because it fails to analyze what green building practices could feasibly be used for the Project. SWAPE explains that the DSEIR fails to analyze a Project design that includes building envelopes and systems to maximize energy performance, the maximization of cross ventilation and interior daylight, and the orientation of buildings, per the directives of MS-2.11. Furthermore, SWAPE explains that the DSEIR fails to provide any evidence of concrete actions designed to target reduced energy use. Thus, the DSEIR fails to demonstrate consistency with MS-2.11.

Response E.13: Consistency with the Green Building Ordinance and Reach Code is required for all projects in San José and compliance with these regulations would be confirmed at the building permit stage. There is no mechanism that would allow a project to be inconsistent with these regulations for which the building department ensures compliance. As described in Response E.10, total compliance with all policies in the General Plan is not necessary to achieve conformance with the 2030 GHGRS. The comment fails to provide substantial evidence that the non-compliance with this policy would result in a significant impact from GHG emissions.

Comment E.14: The DSEIR does not demonstrate consistency with MS-16.2, which states: "Promote neighborhood-based distributed clean/renewable energy generation to improve local energy security and to reduce the amount of energy wasted in transmitting electricity over long distances." Here, the Project's Compliance Checklist states the project "will include solar electrical and/or solar hot water generation (REACH and Title 24 compliance will dictate which are needed)." Further, the DSEIR indicates that the Project "will be served by SJCE's default program (GreenSource), which currently provides 60-percent renewable energy, and this percentage will increase in the future." Similarly to the DSEIR's inconsistency with MS-2.2, the Project is inconsistent with MS-16.2 because the Project does not include solar generation as a mitigation measure or binding condition of approval.

Response E.14: See Responses E.10 to E.13. Furthermore, the GHGRS checklist has been updated by the applicant to provide more information on the project. The updated checklist is provided in Attachment B of this document.

As shown in Attachment B, the project applicant has committed to enrollment in San José Clean Energy's (SJCE's) TotalGreen program for both buildings, which sources 100 percent renewable energy, and the applicant will be subject to a permit Condition of Approval for enrollment in TotalGreen for both towers, which is included as text amendments in Section 5.0 of this document. The Air Quality Assessment (Appendix B of Draft SEIR) assumed the project applicant would opt into SJCE at the GreenSource level as it is the default service. Since completion of the Air Quality Assessment, the applicant has agreed to participate in SJCE at the TotalGreen level (100 percent renewable energy) for both towers; therefore, the previous analysis is more conservative. Refer to Attachment B and Section 5.0 of this document for clarification and the text amendments.

Furthermore, as with Policies MS-2.2 and MS-2.3, this policy promotes, but does not mandate neighborhood-based distributed clean/renewable energy generation. Lastly, the commenter appears to believe that consistency with the checklist policies requires mitigation measures or conditions of project approval to be enforceable. However, the intent of the checklist is to summarize how the proposed project is consistent with the City's GHGRS. Mitigation is only required when a significant impact has been identified. The comment fails to identify that the project would result in a significant impact due to GHG emissions. The proposed project description which outlines the green building measures included in the checklist is binding, as are any conditions of approval included in the applicant's permit, and does not require mitigation measures to confirm aspects of a project.

Comment E.15: The DSEIR does not demonstrate consistency with CD-2.1, which states:

“Promote the Circulation Goals and Policies in the Envision San José 2040 General Plan. Create streets that promote pedestrian and bicycle transportation by following applicable goals and policies in the Circulation section of the Envision San José 2040 General Plan.” CD-2.1 identifies specific measures Projects are to consider, such as wider sidewalks, elements that increase driver awareness, attractive street furniture, reduced traffic speeds, pedestrian-oriented lighting, mid-block pedestrian crossings, pedestrian-activated crossing lights, bulb-outs and curb extensions at intersections, Transportation Demand Management strategies, de-coupled parking, or on-street parking that buffers pedestrians from vehicles. The DSEIR's Compliance Checklist only partially complies with CD-2.1 by including a bike network, street trees and added shade elements, as well as reduced parking. By failing to analyze the feasibility of all the measures identified in CD-2.1, the Project fails to demonstrate consistency with this measure. For example, the DSEIR should explain why a Transportation Demand Management program, which is encouraged by CD-2.1, is not feasible for the Project. Otherwise, the DSEIR fails to conduct the requisite analysis to be consistent with this General Plan provision.

Response E.15: The commenter implies that all potential project elements noted to show compliance with CD-2.1 must be included or specifically explained as to why it is not included in the project. As previously noted in Response E.10, the City takes into account all known information when determining compliance with the checklist.

The project is located within the most pedestrian-oriented area of the City with wide sidewalks and separated bike lanes on Third and Fourth Streets. Furthermore, as noted in the checklist, the project includes an expansion of the bicycle network, enhanced street trees, and reduced parking. The full scope of multi-modal roadway improvements required by the project is determined by Public Works based on the City's goals and policies for pedestrian, bicycle, and transit access. Public Works has identified the following Conditions of Approval:

- Remove the existing sidewalk, curb, and gutter and reconstruction of a 21-foot wide sidewalk that contains a raised bikeway along the Fourth Street project frontage. The section shall be eight-foot wide pedestrian through zone, four-foot wide tree wells, five-foot wide raised bike lane, and four-foot wide landscape buffer.

- Remove the existing sidewalk, curb, and gutter and reconstruction of a 16-foot attached sidewalk with five foot by five foot tree wells along the Santa Clara Street project frontage. Approximately five-foot wide street easement dedication will be required.
- Remove the existing sidewalk, curb and gutter and reconstruction of a 12-foot wide attached sidewalk with four-foot by five-foot tree wells along the Saint John Street project frontage. A two-foot sidewalk easement dedication will be required.
- A signal modification is required at Fourth Street and Santa Clara Street in order to implement the following:
 - A protected bike network along Fourth Street.
 - Construction of a bulb out at the northwest and southwest corner of Fourth Street and Santa Clara Street.
 - Relocation of the existing signal cabinet within the proposed building footprint.
- A signal modification is required at Fourth Street and Saint John Street in order to implement the following:
 - A protected bike network along Fourth Street.
 - Construction of a protected intersection design at Fourth Street and Santa Clara Street.
 - Relocation of the existing signal cabinet within the proposed building footprint.

Construction in compliance with all transportation improvement measures summarized above is required and enforced by Public Works and are included as Conditions of Project Approval. Prior to the approval of the tract map by the Director of Public Works, or the issuance of building permits, whichever occurs first, the applicant will be required to have satisfied all Public Works conditions. The Conditions of Project Approval will be required to be shown on plans to be reviewed for compliance and enforced by Public Works as part of the permitting process.

As written, the policy *promotes* but does not mandate or enforce the circulation goals and policies in the Envision San José 2040 General Plan. There is no required analysis implied in this policy. The project is consistent with the intent of this policy.

Comment E.16: The DSEIR does not demonstrate consistency with TR-7.1, which states:

“Require large employers to develop TDM programs to reduce the vehicle trips and vehicle miles generated by their employees through the use of shuttles, provision for car-sharing, bicycle sharing, carpool, parking strategies, transit incentives and other measures.” Here, the DSEIR’s Compliance Checklist states: “The project will not have a TDM plan to further reduce parking. Our shared parking arrangement will reduce overall parking demand. Office tenants may implement their own TDM plan as part of office Tis.” The DSEIR’s Compliance Checklist acknowledges that TR-7.1 is applicable to the Project, yet fails to include a TDM program, in contradiction of TR-7.1’s stated requirement to implement a TDM program. The DSEIR also fails to explain why providing a TDM program is infeasible for the Project. Thus, the Project conflicts with this General Plan provision.

Response E.16: As noted in the updated GHGRS checklist (refer to Attachment B of this document), the project would include a shared parking arrangement that would reduce overall parking demand for the office and residential components. The project qualifies for a 20 percent reduction in required parking due to proximity to transit and inclusion of bicycle parking consistent with City requirements as discussed on page 108 of Appendix A of the Draft SEIR. The project proposes an additional reduction of 233 spaces due to sharing of parking between the office and residential uses.⁸

In addition, the project includes bicycle parking in excess of City Municipal Code requirements to help offset the need for added parking spaces. As discussed in the Draft SEIR, the project site is centrally located within the downtown within walking distance of multiple transit lines (light rail, VTA bus), the Diridon Transit Station, bike lanes/trails, and would also be within walking distance of a future BART station and existing jobs and services. While there is no specific TDM plan at this time, the project complies with the intent of the policy which is to reduce traffic trips and vehicle miles traveled (VMT). The project does not trigger the requirement for a TDM plan, as VMT is below thresholds defined in the City's Transportation Analysis Policy (Council Policy 5-1)⁹. Nevertheless, the specifics of the proposed project's location and parking reduction measures meet the intent of standard TDM measures required for projects that exceed VMT thresholds. Also, refer to Response E.15 for the required transportation improvements.

Comment E.17: The DSEIR does not demonstrate consistency with MS-3.1, which states: "Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial and developer-installed residential development unless for recreation needs or other area functions." In response, the Compliance Checklist states: "Project will include proper soils management techniques to reduce evapotranspiration. Planting will include native, adaptive and drought tolerant planting to reduce watering needs. Irrigation designs will be low flow and drip wherever feasible. Stormwater flow-through planters will make use of precipitation, when available, to reduce dependence on irrigation. Irrigation timers will ensure proper timing for all landscape watering."¹⁰ This response is flawed because these measures are not included as binding measures. As stated above, environmental documents, including SEIRs, must mitigate significant impacts through measures that are "fully enforceable through permit conditions, agreements, or other legally binding instruments." Inconsistency with the Envision San José 2040 General Plan would constitute a significant GHG impact, according to the terms of the GHGRS. SWAPE explains that since the measures proposed to comply with MS-3.1 are nonbinding, they are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

Response E.17: The measures noted by the applicant in the GHGRS checklist are binding because they are part of the proposed project as shown in the project plan

⁸ The project also replaces the existing surface parking for the adjacent apartment building which would be removed as a result of this project.

⁹ Policy 5-1 can be accessed at <https://www.sanjoseca.gov/home/showpublisheddocument/2516/636633191024830000>.

¹⁰ Appendix H, pg. 9

set. Furthermore, Public Work's has adopted the State's Model Water Efficient Landscape Ordinance into City regulations making compliance mandatory (see Chapter 15.11 of the San José Municipal Code), and compliance will be evaluated at the building permit stage. The project is consistent with this measure.

Comment E.18: The DSEIR does not demonstrate consistency with MS-19.4, which states: "Require the use of recycled water wherever feasible and cost-effective to serve existing and new development." The DSEIR's Compliance Checklist states: "The Project is currently exploring technology and systems needed to reuse potable water onsite. Cost effectiveness and final commitments to these technologies will not be flushed out until Building Permit phase." The DSEIR's response is insufficient because it improperly defers analysis of this measure to a future date. The CEQA Guidelines provide that "[w]hile specific details of a mitigation measure may be developed after project approval, an agency may only do so when it is impracticable or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential actions that can feasibly achieve that performance standard." Here, the DSEIR does not commit itself to mitigation, adopt performance standards, or identify potential measures. Thus, the Compliance Checklist does not demonstrate the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

Response E.18: As stated in previous responses, measures in the GHGRS Checklist are not intended to be mitigation measures, and 100 percent conformance with all General Plan Policies is not needed to demonstrate conformance with the 2030 GHGRS for the purpose of determining a less than significant impact from GHG emissions. The updated GHGRS checklist, included as Appendix B, states: "The project would not include the use of recycled water systems because it is not cost-effective or feasible. Utility congestion in the walls and ceilings would preclude additional piping needed for this technology. Cost-effectiveness to these technologies will be flushed out during the Building Permit phase." As stated in Policy MS-19.4, the City would confirm that the use of recycled water is not cost-effective or feasible consistent with this policy during the building permit stage.

Comment E.19: The DSEIR does not demonstrate consistency with MS-21.3, which states: "Ensure that San José's Community Forest is comprised of species that have low water requirements and are well adapted to its Mediterranean climate. Select and plant diverse species to prevent monocultures that are vulnerable to pest invasions. Furthermore, consider the appropriate placement of tree species and their lifespan to ensure the perpetuation of the Community Forest." The DSEIR's Compliance Checklist states: "We will have diverse landscaping to match the climate, using native and adaptive plants." SWAPE's comments explain that this response is insufficient because it fails to analyze the issues specified in MS-21.3, and does not provide evidence of concrete actions or measures proposed to satisfy this measure. Thus, the Project does not demonstrate consistency with the GHGRS.

Response E.19: The proposed plant species are included in the project plan set on file at the City and compliance with the water efficient landscape requirement of the Municipal Code is required (see Response E.17). No analysis or additional

mitigation measures are required. The project is consistent with this measure.

Comment E.20: ii. The DSEIR Fails to Demonstrate Consistency with GHGRS Reduction Strategies

Table B of the GHGRS identifies GHG reduction strategies and recommended consistency options. Projects need to demonstrate consistency with the GHGRS reduction strategies listed in Table B or document why the strategies are not applicable or are infeasible.

The Project fails to demonstrate consistency with strategies intended to promote “Zero Net Carbon Residential Development.” In addition to achieving/exceeding the City’s Reach Code, the Project must either (1) exclude natural gas infrastructure, (2) install on-site renewable energy systems or participate in a community solar program to offset 100% of the project’s estimated energy demand, or (3) participate in San José Clean Energy at the Total Green level (i.e., 100% carbon-free electricity). Otherwise, the DSEIR is required to explain why such measures are not feasible. SWAPE explains that the DSEIR’s response is insufficient for four reasons. First, the Compliance Checklist indicates that gas infrastructure is only limited, not completely excluded on the Project site. Second, the Compliance Checklist indicates that the Project has not yet been approved for a Reach Code exemption allowing construction of gas infrastructure. Third, while the Project purportedly includes solar panels, the DSEIR fails to require on-site renewable energy generation to offset 100% of the Project’s estimated energy demand. Fourth, the Compliance Checklist indicates that the Project would participate only in the SJCE GreenSource level, rather than the TotalGreen level. Thus, the Project’s purported enrollment in the SJCE GreenSource program does not satisfy this measure. As a result, SWAPE is unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

Response E.20: Since circulation of the Draft SEIR, the project applicant has committed to enroll in SJCE’s TotalGreen level (100 percent renewables) program for both buildings. The GHGRS checklist has been revised to reflect this (see Attachment B of the First Amendment). Project are required to be “solar ready” to comply with the City’s Reach Code, which exceeds the 2019 California Green Building Standards. To comply with the City’s Reach Code, the project proposes solar electric generation which would be installed per the Reach Code requirements. Since circulation of the Draft SEIR, the applicant is no longer proposing natural gas usage within the retail component for the restaurant space. Therefore, no gas infrastructure is proposed. Refer to Section 5.0 of this document for the proposed text amendment. For these reasons, the project would be consistent with the City’s GHGRS.

Comment E.21: The Project fails to demonstrate consistency with strategies intended to promote “Renewable Energy Development.” These include (1) installing solar panels, solar hot water, or other clean energy power generation sources on development sites, (2) participating in community solar programs to support development of renewable energy in the community, or (3) participating in San José Clean Energy at the Total Green level (i.e., 100% carbon-free electricity) for electricity accounts associated with the project. Here, the Compliance Checklist states: “The project will install solar panels and/or solar hot water panels as part of our achievement of the

REACH code and Title 24.” But as discussed above, the Project fails to identify binding measures requiring installation of solar facilities on the Project site.

Response E.21: Refer to Responses E.10 through E.20.

Comment E.22: **The Project fails to demonstrate consistency with strategies intended to promote “Zero Waste Goal.”** These include: “(1) Provide space for organic waste (e.g., food scraps, yard waste) collection containers, and/or (2) Exceed the City’s construction & demolition waste diversion requirement.” The DSEIR’s Compliance Checklist states: “Will use onsite sorting of materials to exceed the City’s construction demo and waste diversion requirement.” This response is insufficient because the Project does not commit to onsite sorting via binding mitigation measures or conditions of approval. Further, although the GHGRS requires Applicant-proposed measures like onsite sorting to “[d]emonstrate the effectiveness of the proposed measure to reduce the project’s GHG emissions” and “[i]nclude a description of how your measure will reduce emissions and provide supporting quantification documentation/assumptions,” the DSEIR’s Compliance Checklist fails to provide that information.

Overall, the Project has not demonstrated consistency with the GHGRS, and the less-than-significant GHG impact conclusion is not supported by substantial evidence.

Response E.22: The commenter is mistaken with their interpretation of the City’s GHGRS checklist. Tables A and B need only describe whether or not a General Plan policy or measure applies and if it applies, how the project will comply. Table C, which is where an applicant must “demonstrate the effectiveness of the proposed measure to reduce the project’s GHG emissions” is specific to alternate GHG reduction measures proposed by a project when the applicant does not plan to comply with the measures suggested in the checklist. If an alternative measure is proposed, analysis is required that shows equivalent reduction in GHG emissions as the City-suggested measures, which were analyzed in support of the GHGRS and do not require additional quantitative analysis.

Senate Bill (SB) 1383 requires the State to reduce organic waste disposal by 75 percent by 2025 and rescue at least 20 percent of currently disposed edible food by 2025. Multi-family properties would be compliant with SB 1383 because organics would be composted when collected with garbage. In addition, businesses are required to have solid waste collection through Republic Services to comply with the City’s Municipal Code and SB 1383. Refer to Section 5.0 of this document for the text amendment. As mentioned on page 112 of Appendix A of the Draft SEIR, the Construction and Demolition Diversion Deposit Program (CDDD) requires projects to divert at least 50 percent of the total projected project waste. In addition, the GHGRS checklist has been revised to reflect this (see Attachment B of the First Amendment).

As noted in Response E.10, the information provided in the GHGRS checklist, along with all other applicable project information provided with the development permit application (e.g., proposed project plans) and existing regulations and policies is

sufficient for decisions-makers to determine consistency with the GHGRS.

Comment E.23: C. The City Fails to Fully Analyze and Mitigate Significant Health Risks from Soil Contamination

The DSEIR states that the Project site contains at least 11 recognized environmental conditions (“RECs”) at the Project site, as a result of the operations of a gas station, drycleaner, lumber business, and automobile repair and service. Courts have held that a CEQA document must analyze the impacts from human exposure to toxic substances, and that disturbance of contaminated soil is a potentially significant impact which requires disclosure and analysis of health and safety impacts in an EIR. The DSEIR concludes that the Project’s impacts from exposure to hazardous materials are less than significant with mitigation. But this mitigation is inadequate because the DSEIR improperly defers mitigation, and is inconsistent with provisions in the Downtown Strategy 2040 EIR.

To begin with, the Downtown Strategy 2040 EIR states that “[i]f a Phase I site assessment were to indicate that a release of hazardous materials could have affected the site, additional soil and/or groundwater investigations would be completed to assess the presence and extent of contamination at the site.” Here, the DSEIR’s Phase I ESA identifies significant sources of soil and groundwater contamination. But the DSEIR fails to adopt binding mitigation requiring a Phase II ESA, which would include the soil and/or groundwater investigations required by the Downtown Strategy 2040 EIR. The DSEIR discusses the preparation of a Phase II ESA in Mitigation Measure (“MM”) HAZ-1.2, which requires the project applicant to enroll in the SCCDEH Site Cleanup Program and determine if additional Phase II soil, soil vapor and groundwater investigations and remediation are required. But HAZ-1.2 does not actually require a Phase II – it merely requires the Applicant to consider whether one is required. Thus, the DSEIR fails to actually require a Phase II ESA be conducted, which conflicts with the terms of the Downtown Strategy 2040 EIR. This constitutes a significant and unmitigated impact under CEQA.

Response E.23: The commenter is incorrect that the Draft SEIR does not require a Phase II Environmental Site Assessment (ESA) and that “it merely requires the Applicant to consider whether one is required.” The measures require the applicant to obtain regulatory oversight from an agency with regulatory purview of hazardous materials remediation. Mitigation measures HAZ-1.1 through HAZ-1.4 (pages 103-104 of the Draft SEIR) do specify testing, as determined to be required by the regulatory oversight agency, based on the findings of the Phase I ESA as summarized below and consistent with the Downtown Strategy 2040 Final EIR.

- For the potential underground storage tanks (USTs), the mitigation requires identification of underground objects or structures with a geophysical survey. Removal of any identified objects or structures will be in coordination with the San José Fire Department (SJFD) and Santa Clara County Department of Environmental Health (SCCDEH). As part of the removal, soil samples below the objects/structures are required under regulatory oversight from SCCDEH and/or SJFD. (MM HAZ-1.1)

- Prior to issuance of grading permits, the applicant shall work with SCCDEH to determine if additional soil, soil vapor and groundwater investigation and remediation are required. (MM HAZ-1.2)
- A facility closure plan shall be submitted to the San José Fire Department and SCCDEH for review and approval to ensure that required closure and site cleanup activities are completed prior to issuance of demolition, graphic, or building permits. (MM HAZ-1.3)
- For 147 East Santa Clara Street, a qualified environmental professional shall analyze the soils around the below-grade hydraulic lifts for potential contamination. (MM HAZ-1.4)

All four measures are required to reduce the impact to less than significant (refer to Section 5.0 of this document for text clarification). In addition, by requiring the applicant to enroll in the Voluntary Cleanup Program, the City is establishing a more stringent requirement than just a Phase II. Lastly, this is an SEIR, so mitigation measures above and beyond those in the Downtown Strategy 2040 Final EIR are proposed based on project-specific site conditions.

Comment E.24: MM HAZ-1.2 is also flawed because it constitutes improperly deferred mitigation. As stated by the CEQA Guidelines, “[w]hile specific details of a mitigation measure may be developed after project approval, an agency may only do so when it is impracticable or infeasible to include those details during the project’s environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential actions that can feasibly achieve that performance standard.”¹¹ Here, the DSEIR defers the analysis included in a Phase II ESA until after project approval without satisfying the requisite conditions. MM HAZ-1.2 does not commit to mitigation, as explained above, or adopt specific performance standards. Thus, it improperly defers mitigation. The consequence of this deferred mitigation is that detection and disclosure of contamination beyond the 11 RECs will occur after project approval, beyond the public eye

Response E.24: The Downtown Strategy 2040 Final EIR specifically states. “If a Phase I site assessment were to indicate that a release of hazardous materials could have affected the site, additional soil and/or groundwater investigations would be completed to assess the presence and extent of contamination at the site.” Performance and cleanup standards for all project sites are determined by the regulatory oversight agency, which include preparation and implementation of Health and Safety Plans and Soil Management Plans as deemed necessary.

After implementation of MM HAZ-1.1, which would identify subsurface objects on-site to be removed, per MM HAZ-1.2 in the Draft SEIR (page 103), the applicant is required to work under regulatory oversight of the SCCDEH through the Site Cleanup Program to determine if additional soil, soil vapor and groundwater investigations and remediation is required prior to issuance of any demolition, grading, or building permit. This requirement is above and beyond requiring a Phase II ESA before project approval, as it requires that the applicant obtain regulatory oversight. As

¹¹ CEQA Guidelines, § 15126.4(a)(1)(B).

discussed for Response E.23 above, the CEQA compliance document for the proposed project is a Supplemental EIR. As such, additional/more restrictive mitigation measures are required to address site-specific conditions of the project. The project applicant must then provide the Site Management Plan and Removal Action Plan, or equivalent plans as required by the SCCDEH, to the City of San José Director of Planning, Building, and Code Enforcement, or director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department to show evidence of the oversight.

In addition, in compliance with MM HAZ-1.3, as part of the facility closure process for occupants on-site that use and/or store hazardous materials must submit a closure plan to SCCDEH and SJFD to ensure that "the required closure and any necessary site cleanup activities are completed prior to the issuance of demolition, grading, or building permits, whichever occurs first."

This is not deferred mitigation. The mitigation measures describe required regulatory oversight, facility closure, and cleanup necessary to receive approval from the regulatory oversight agencies to allow the proposed project to proceed. For the Voluntary Cleanup Site to be considered "closed" by SCCDEH (and/or RWQCB or DTSC, as applicable), the site would need to meet applicable residential screening levels. For clarity, text edits have been included. See Section 5.0 of this document.

Comment E.25: MM HAZ-1.4 also constitutes improperly deferred mitigation. MM HAZ-1.4 requires removal of below-grade hydraulic lifts existing on the site, and analysis of soil around the lifts. This constitutes impermissibly deferred mitigation because it fails to specifically require mitigation of any soil contamination that is found – the CEQA Guidelines only permit deferred mitigation when the agency commits itself to the mitigation.

The DSEIR also fails to include applicable mitigation measures identified in the Downtown Strategy 2040 EIR. The Downtown Strategy 2040 EIR outlines specific "Measures Included in the Project to Reduce and Avoid Impacts related to Contamination." The EIR explains that although adherence to existing regulations would generally reduce hazards associated with contaminated soil and groundwater, "future projects under the proposed Downtown Strategy 2040 may be required to complete one or more of the following measures, depending on the extent and magnitude of contamination and regulatory agency requirements." These measures include preparation of a Phase II Environmental Site Assessment, Remedial Action Workplan, Soil Management Plan, Health and Safety Plan, and other analyses. But these analyses are not required by the DSEIR's three mitigation measures, nor does the DSEIR analyze whether they are applicable to the Project. As a result, the DSEIR fails to mitigate the Project's significant soil contamination impacts in accordance with the Downtown Strategy 2040 EIR. The DSEIR's conclusion that the Project's significant impacts are mitigated to a less-than-significant level is unsupported.

Response E.25: MM HAZ-1.4 works in concert with the other mitigation measures and, as such, would have the same cleanup requirements and regulatory oversight. This is not deferred mitigation. See Responses E.23 and E.24.

Comment E.26: D. The DSEIR Fails to Fully Mitigate the Project's Noise Impacts

In Impact NOI-2, the DSEIR states that construction noise would exceed ambient levels by five dBA for a period of more than one year within 500 feet of residential uses or 200 feet of commercial or office uses, which exceeds the City thresholds.¹² But MM NOI-2.1 merely calls for a “noise logistics plan” to be prepared after project approval. This approach conflicts with the requirements of the CEQA Guidelines, which prohibit deferring formulation of mitigation measures unless the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential actions that can feasibly achieve that performance standard.” Here, MM NOI-2.1 states that the proposed noise logistics plan must contain certain noise-reducing features, but lacks any commitment to reduce impacts by a certain level. And the construction noise mitigation plan is not held to any performance metrics. Although “the noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director’s designee prior to the issuance of any grading or demolition permits,” courts have held that mitigation that does no more than allow approval by a local department without setting enforceable standards is inadequate. Thus, the DSEIR fails to adequately mitigate the Project’s significant construction noise impacts.

In addition to deferring formulation of mitigation measures, NOI-2.1 conflicts with the Envision San José 2040 General Plan. Policy EC-1.7 states: “Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City’s Municipal Code.” Here, although NOI-2.1 does require “state-of-the-art” mufflers on construction equipment, the overall noise logistics plan does not clearly require best available technology and techniques. Thus, the Project conflicts with the General Plan.

Response E.26: There are no quantifiable construction noise level thresholds at the federal, state, or local level, only operational noise. As stated in the Downtown Strategy 2040 Final EIR, the City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months (General Plan Policy EC-1.7). Although not applicable to construction, thresholds summarized in General Plan Policy EC-1.2 for operational noise were used in combination with the City’s construction noise threshold (General Plan Policy EC-1.7) as a conservative estimate of significant construction noise, even though “substantial noise generating activities” (as defined in General Plan Policy EC-1.7) may not occur for 12 months or more, which would be considered a less than significant impact with mitigation incorporated.

Nevertheless, the City is requiring that MM NOI-2.1 (preparation of construction noise logistics plan) to be implemented to ensure consistency with General Plan Policy EC-1.7, which defines the City’s adopted threshold for determining significant construction noise impacts. The proposed project includes both the City’s Standard Permit Conditions (page 132 of the Draft SEIR) and a construction noise logistics

¹² Envision San José 2040 General Plan, Policy EC-1.7.

plan (page 132-133 of the Draft SEIR) consistent with the Downtown Strategy 2040 Final EIR. Therefore, with implementation of the Standard Permit Conditions and MM NOI-2.1 (refer to pages 132-133 of the Draft SEIR), the proposed project would have a less than significant construction noise impact.

The commenter suggests that “new technology” power construction Equipment with state-of-the-art noise shielding and muffling devices” (page 133 of the Draft SEIR) is not equivalent to best available noise suppression devices and techniques. The City disagrees with the commenter’s opinion. For the City of San José, state of the art is equivalent to best available and is consistent with the General Plan. The commenter has provided no evidence that the difference in terminology between MM NOI-2.1 and General Plan Policy EC-1.7 results in any inconsistency or would result in a greater impact than was identified in the Downtown Strategy 2040 Final EIR.

Comment E.27: E. The DSEIR Fails to Adequately Analyze Potentially Significant Growth-Inducing Impacts

The CEQA Guidelines require that an EIR identify the likelihood that a proposed project could “foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” Here, the Project calls for 525,000 square feet (“sf”) of office space, and the Downtown Strategy 2040 assumes a total of 14,200,000 sf of planned office space. The DSEIR claims that the increase in office space is “part of the planned growth in the Downtown Strategy 2040,” but fails to conduct the analysis requisite to substantiate this claim. Similarly, the Project’s Initial Study states “[t]he increase in the resident population (1,324 new residents) and employee population (3,048 employees) would be within the overall development capacity assumed in the Downtown Strategy 2040. But the IS also fails to substantiate this claim. In order to demonstrate that the Project’s proposed increase in office space is within planned capacity, the DSEIR must analyze how much office space has already been constructed or is planned to be constructed (while reviewing cumulative projects in the Downtown Strategy 2040 project area), and then determine whether the Project’s contribution to that increase in office space would exceed capacity. Since the DSEIR fails to provide this analysis, it lacks substantial evidence to claim growth-inducing impacts would be less than significant.

Response E.27: The City tracks all development within the Downtown Strategy 2040 plan area. At this time, all entitled and currently proposed projects are within the development capacity of the Downtown Strategy 2040 Plan; therefore, the project would not result in growth-inducing impacts.

Comment E.28: VI. CONCLUSION

The DSEIR is inadequate and must be withdrawn. We urge the City to prepare and circulate a revised DSEIR which accurately describes the project description and the existing environmental setting, discloses all of the Project’s potentially significant impacts, and requires all feasible mitigation measures to reduce the Project’s significant environmental and public health impacts. We thank you for the opportunity to provide these comments on the DSEIR.

Response E.28: See Responses E.1 through E.27. The Draft SEIR meets the requirements of CEQA. Therefore, recirculation is not required.

Exhibit A – Memo from SWAPE

Comment E.29: We have reviewed the June 2022 Draft Supplemental Environmental Impact Report (“DSEIR”) for the Icon-Echo Mixed-Use Project (“Project”) located in the City of San Jose (“City”). The Project proposes to demolish 22,527-square-feet (“SF”) of existing structures and construct two towers, including 415 residential units, 516,500-SF of office space, and 8,500-SF of retail space, as well as 992 parking spaces on the 2.1-acre site.

Our review concludes that the DSEIR fails to adequately evaluate the hazards, hazardous materials, air quality, and greenhouse gas impacts. As a result, emissions associated with construction and operation of the proposed Project are underestimated and inadequately addressed. A revised EIR should be prepared to adequately assess and mitigate the potential hazards, hazardous materials, air quality, and greenhouse gas impacts that the project may have on the environment.

Response E.29: See Response E.1.

Comment E.30: Hazards and Hazardous Materials Inadequate Disclosure and Analysis of Impacts

The DSEIR states that the Project site was used for a former gas station, drycleaner, and lumber business. This site is currently used as a gas station and automobile repair and service. A 2020 Phase I Environmental Site Assessment (“ESA”), provided as Appendix E to the DSEIR, found 11 recognized environmental conditions (“RECs”) at the Project site, including:

- Oil water separator and the associated auto repair and painting activities;
- Gas station and an auto repair shop, along with a dry cleaner (potential vapor migration)
- Laundry business (potential vapor migration);
- Laundry and baby diaper cleaning service (potential vapor migration);
- Three fuel underground storage tanks (USTs) and one waste oil UST at current gas station;
- Detections in a previous Phase II ESA of soil vapor and groundwater samples above residential Environmental Screening Levels (ESLs) for total petroleum hydrocarbons as gasoline (TPH-g), 1,2-dichloroethane (1,2-DCA), chlorobenzene and benzene;
- Release of hydraulic fluid which could have contained PCBs;
- Former automobile dealership and service businesses;
- Gasoline UST;
- Dry cleaning business; and
- Lumber mill.

To evaluate these conditions, the DSEIR incorporates mitigation to be implemented only after Project approval. Specifically, Mitigation Measure (“MM”) HAZ-1.1 calls for evaluation of the RECs prior to grading, MM HAZ-1.2 calls for voluntary enrollment in the County Site Cleanup Program prior to grading, and MM HAZ-1.4 provides for the removal of hydraulic lifts and the oil water separator prior to grading.

This mitigation is inadequate because forestalling completion of these measures until after Project approval defers disclosure of conditions which may be significant and warrant additional, specific mitigation measures. A revised EIR needs to be prepared to include the results of a Phase II ESA to be completed before project approval. On the basis of the Phase II ESA, the revised EIR should include mitigation measures that may be required to address the contamination. These measures may include excavation and offsite disposal of contaminated soil, installation of a soil vapor extraction system and installation of a groundwater extraction and treatment system. The impacts of implementing any necessary mitigation that requires use of heavy machinery and trucks should be evaluated in the EIR, including estimates of emissions of criteria air pollutants and health impacts of the emissions of air toxins, including diesel particulate matter.

Response E.30: The necessity of excavation and offsite disposal of contaminated soil, installation of a soil vapor extraction system and installation of a groundwater extraction and treatment system will be determined by the regulatory oversight agency (SCCDEH). The requirement for the project applicant to enroll in the Voluntary Cleanup Program¹³ under regulatory oversight is a more stringent mitigation measure than the measures proposed in the Downtown Strategy 2040 FEIR. Refer to Responses E.23 and E.24 for additional explanation.

Comment E.31: Air Quality – Unsubstantiated Input Parameters Used to Estimate Project Emissions

The DSEIR's air quality analysis relies on emissions calculated with the California Emissions Estimator Model ("CalEEMod") Version 2020.4.0 (p. 29). CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but the California Environmental Quality Act ("CEQA") requires that such changes be justified by substantial evidence. Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters are utilized in calculating the Project's air pollutant emissions and make known which default values are changed as well as provide justification for the values selected.

When reviewing the Project's CalEEMod output files, provided in the Air Quality Assessment and Air Quality Cumulative Memorandum ("AQ Assessment") as Appendix B to the DSEIR, we found that a couple model inputs were not consistent with information disclosed in the DSEIR. As a result, the Project's construction and operational emissions are underestimated. A revised EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on local and regional air quality.

Response E.31: See Responses E.32 and E.33 below.

¹³ Additional information on SCCDEH's Voluntary Cleanup Program is available at the following link: <https://hazmat.sccgov.org/programs-and-services/site-mitigation-program>.

Comment E.32: Unsubstantiated Number of Saturday and Sunday Operational Vehicle Trips
According to the Local Transportation Analysis (“LTA”), provided as Appendix I to the DSEIR, the proposed Project is expected to generate 4,753 daily operational vehicle trips (see excerpt below) (p. 11, Table 2).

Table 2
Project Trip Generation Estimates

Land Use	% of Vehicle Mode Share	% Reduction	Size	Daily		AM Peak Hour						PM Peak Hour					
				Rate	Trip	Pk-Hr Rate	In	Split Out	In	Trip Out	Total	Pk-Hr Rate	In	Split Out	In	Trip Out	Total
Proposed Land Uses																	
ITE LU # 222 - Multifamily Housing (High-Rise) ¹			415 Dwelling Units	4.45	1,847	0.31	24%	76%	31	96	129	0.36	61%	35%	91	58	149
- Residential & Office Mixed-Use Reduction ²		3%			-55				-1	-3	-4				-3	-2	-5
- Residential & Retail Mixed-Use Reduction ³		15%			-48				0	-1	-1				-3	-2	-5
- Location-Based Reduction ⁵	78%	22%			-384				-7	-21	-28				-19	-12	-31
- VMT Reduction ⁶		5.87%			-80				-1	-4	-5				-4	-2	-6
Residential Sub-Total					1,280				22	69	91				62	40	102
ITE LU # 710 - General Office Building ¹			525,000 Square Feet	9.74	5,114	1.16	86%	14%	524	85	609	1.15	16%	84%	97	507	604
- Residential & Office Mixed-Use Reduction ²		3%			-55				-3	-1	-4				-2	-3	-5
- Office & Retail Mixed-Use Reduction ⁴		3%			-161				-2	-3	-5				-9	-8	-17
- Location-Based Reduction ⁵	69%	31%			-1,518				-161	-25	-186				-27	-154	-181
Office Sub-Total					3,380				358	56	414				59	342	401
ITE LU # 820 - Shopping Center ¹			8,500 Square Feet	37.75	321	0.94	62%	38%	5	3	8	3.81	48%	52%	15	17	32
- Residential & Retail Mixed-Use Reduction ³		15%			-48				-1	0	-1				-2	-3	-5
- Office & Retail Mixed-Use Reduction ⁴		3%			-161				-3	-2	-5				-8	-9	-17
- Location-Based Reduction ⁵	83%	17%			-19				0	0	0				-1	-1	-2
Retail Sub-Total					93				1	1	2				4	4	8
Baseline Project Trips (Before Reductions)					7,282				560	186	746				203	582	785
Proposed Project Trips (After Reductions)					4,753				381	126	507				125	386	511

As such, the Project’s model should have included trip rates that reflect the estimated number of average daily vehicle trips. However, review of the CalEEMod output files demonstrates that the “Icon-Echo MU Towers, San Jose - Operational Emissions” model includes only 2,157.83 Saturday and 1,317.69 Sunday operational vehicle trips (see excerpt below) (Appendix B, pp. 106).

Land Use	Average Daily Trip Rate		
	Weekday	Saturday	Sunday
Apartments High Rise	1,278.20	1,303.10	1033.35
Enclosed Parking with Elevator	0.00	0.00	0.00
General Office Building	3,381.00	766.50	241.50
Strip Mall	92.99	88.23	42.84
Total	4,752.19	2,157.83	1,317.69

As demonstrated above, the Saturday and Sunday vehicle trips are underestimated by 2,595.17- and 3,435.31-trips, respectively. As such, the trip rates inputted into the model are underestimated and inconsistent with the information provided by the LTA.

These inconsistencies present an issue, as CalEEMod uses the operational vehicle trip rates to calculate the emissions associated with the operational on-road vehicles. Thus, by including underestimated operational daily vehicle trips, the model underestimates the Project’s mobile-source operational emissions and should not be relied upon to determine Project significance.

Response E.32: As explained in Response E.8, the standard methodology for estimating trip generation is to calculate weekday trips with a focus on peak hour trips. The Air Quality Analysis for the Draft SEIR used the correct trip generation rates for the proposed project. As described in the Air Quality Analysis (Appendix B of the Draft SEIR), the weekday rates were adjusted for Saturday and Sundays per the ratios assigned by CalEEMod, as the traffic analysis does not provide estimates for

weekends or holidays. The number of weekday trips used is consistent with the project Transportation Analysis.

Comment E.33: *Unsubstantiated Changes to Wastewater Treatment System Percentages*

Review of the CalEEMod output files demonstrates that the “Icon-Echo MU Towers, San Jose - Operational Emissions” model includes several changes to the default wastewater treatment system percentages (see excerpt below) (Appendix B, pp. 103).

Table Name	Column Name	Default Value	New Value
tblWater	AerobicPercent	87.46	100.00
tblWater	AerobicPercent	87.46	100.00
tblWater	AerobicPercent	87.46	100.00
tblWater	AerobicPercent	87.46	100.00
tblWater	AnaerobicandFacultativeLagoonsPercent	2.21	0.00
tblWater	AnaerobicandFacultativeLagoonsPercent	2.21	0.00
tblWater	AnaerobicandFacultativeLagoonsPercent	2.21	0.00
tblWater	AnaerobicandFacultativeLagoonsPercent	2.21	0.00
tblWater	SepticTankPercent	10.33	0.00
tblWater	SepticTankPercent	10.33	0.00
tblWater	SepticTankPercent	10.33	0.00
tblWater	SepticTankPercent	10.33	0.00
tblWoodstoves	WoodstoveWoodMass	582.40	0.00

As you can see in the excerpt above, the model assumes that the Project’s wastewater would be treated 100% aerobically. As previously mentioned, the CalEEMod User’s Guide requires any changes to model defaults be justified. According to the “User Entered Comments and Non-Default Data” table, the justification provided for these changes is:

“WWTP 100% aerobic no septic tanks or lagoons in downtown San Jose” (Appendix B, pp. 81).

However, these changes remain unsupported. The IS, provided as Appendix A to the DSEIR, indicates that “[w]astewater treatment in San José is provided by the San José-Santa Clara Regional Wastewater Facility” (p. 115). Review of the San José-Santa Clara Regional Wastewater Facilities treatment process reveals the use of anaerobic bacteria in the digesters phase of treatment. As such, the assumption that the Project’s wastewater would be treated 100% aerobically is incorrect.

These unsubstantiated changes present an issue, as each type of wastewater treatment system is associated with different GHG emission factors, which are used by CalEEMod to calculate the Project’s total GHG emissions. Thus, by including unsubstantiated changes to the default wastewater treatment system percentages, the model may underestimate the Project’s GHG emissions and should not be relied upon to determine Project significance.

Response E.33: See Response E.9.

Comment E.34: *Greenhouse Gas – Failure to Adequately Evaluate Greenhouse Gas Impacts*

The IS, provided as Appendix A to the DSEIR, relies upon the Project’s consistency with the City’s 2030 Greenhouse Gas Reduction Strategy (“GHGRS”) in order to conclude that the Project would

result in a less-than-significant greenhouse gas (“GHG”) impact (p. 59-60). However, review of *Table A: General Plan Consistency* and *Table B: 2030 Greenhouse Gas Reduction Strategy Compliance* within the Compliance Checklist, provided as Appendix H to the DSEIR, reveal that the Project is inconsistent with numerous measures, including but not limited to those listed below:

GHGRS Project Compliance Checklist	
Table A: General Plan Consistency	
<i>Implementation of Green Building Measures</i>	
MS-2.2: Encourage maximized use of on-site generation of renewable energy for all new and existing buildings.	<p>Here, the Compliance Checklist states: “Rooftop areas on this project are used for mechanical equipment, outdoor open space for tenants and stormwater catchment. Solar hot water or solar electrical generation will be applied in areas not covered by these uses” (Appendix H, p. 5). However, this response is insufficient for two reasons.</p> <p>First, by simply stating that solar panels would occupy open rooftop space, the Project commits to the bare minimum requirements. As such, the Compliance Checklist fails to demonstrate how the Project would encourage <i>maximized</i> use of on-site renewable energy for all new and existing buildings.</p> <p>Second, the inclusion of rooftop solar is not included as a mitigation measure or a binding condition of approval, making its inclusion speculative and unenforceable. This is incorrect, as according to the <i>AEP CEQA Portal Topic Paper</i> on mitigation measures:</p> <p>“While not “mitigation”, a good practice is to include those project design feature(s) that address environmental impacts in the mitigation monitoring and reporting program (MMRP). Often the MMRP is all that accompanies building and construction plans through the permit process. If the design features are not listed as important to addressing an environmental impact, it is easy for someone not involved in the original environmental process to approve a change to the project that could eliminate one or more of the design features without understanding the resulting environmental impact” (emphasis added).</p> <p>As you can see in the excerpts above, PDFs are not mitigation measures and may be eliminated from the Project’s design. Here, as the DSEIR fails to require the Project to incorporate solar, we cannot guarantee that this measure would be implemented, monitored, and enforced on the Project site.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>

Response E.34: See Response E.3.

Comment E.35:

GHGRS Project Compliance Checklist	
Table A: General Plan Consistency	
<i>Implementation of Green Building Measures</i>	
MS-2.3: Encourage consideration of solar orientation, including building placement, landscaping, design and construction techniques for new construction to minimize energy consumption.	<p>Here, the Compliance Checklist states: “Building will have flat roofs to accommodate appropriate solar orientation” (Appendix H, p. 5).</p> <p>However, this response is insufficient for two reasons.</p> <p>First, by simply stating that the “[b]uilding will have flat roofs,” the Project commits to the bare <i>minimum</i> requirements. As such, the Compliance Checklist fails to demonstrate how the Project would encourage consideration of building placement, landscaping, design and construction techniques to minimize energy consumption. Furthermore, the Compliance Checklist fails to provide any evidence of concrete actions or measures proposed to satisfy this measure.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>

Response E.35: See Response E.12.

Comment E.36:

GHGRS Project Compliance Checklist	
Table A: General Plan Consistency	
<i>Implementation of Green Building Measures</i>	
MS-2.11: <i>Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).</i>	<p>Here, the Compliance Checklist states: “Buildings will be targeting LEED NC Silver. We will comply with the City REACH code (Appendix H, p. 5).</p> <p>Furthermore, the DSEIR states: “[T]he proposed project would be designed to achieve LEED Silver certification and constructed in compliance with CALGreen requirements, the City’s Reach Code, the City’s Council Policy 6-32 (Private Sector Green Building Policy) and Green Building Ordinance, and would also be required to comply with the City’s Reach Code and will be served by SJCE’s default program (GreenSource), which currently provides 60-percent renewable energy, and this percentage will increase in the future” (p. 146).</p>

	<p>However, this response is insufficient, as the Compliance Checklist fails to demonstrate how the Project would incorporate green building practices to minimize energy consumption. Specifically, the Compliance Checklist and DSEIR should have discussed and considered a Project design that includes building envelopes and systems to maximize energy performance), the maximization of cross ventilation and interior daylight, and the orientation of buildings. Furthermore, the DSEIR fails to provide any evidence of concrete actions designed to target reduced energy use.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>
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Response E.36: See Response E.13.

Comment E.37:

GHGRS Project Compliance Checklist	
Table A: General Plan Consistency	
<i>Implementation of Green Building Measures</i>	
<p>MS-16.2: Promote neighborhood-based distributed clean/renewable energy generation to improve local energy security and to reduce the amount of energy wasted in transmitting electricity over long distances.</p>	<p>Here, the Compliance Checklist states:</p> <p>“The project will include solar electrical and/or solar hot water generation (REACH and Title 24 compliance will dictate which are needed). This allows the project to minimize its dependence on the traditional energy grid, thereby reducing the need for the use of electricity transmitted over long distances.” (Appendix H, p. 6).</p> <p>Furthermore, the DSEIR indicates that the Project “will be served by SJCE’s default program (GreenSource), which currently provides 60-percent renewable energy, and this percentage will increase in the future” (p. 146).</p> <p>However, this response is insufficient. According to the San Jose Clean Energy (“SJCE”) website, customers can upgrade to TotalGreen, which provides 100% renewable energy for only \$4 more per month. Thus, by failing to opt in to the TotalGreen program, the Project fails to promote neighborhood-based distributed clean/renewable energy generation to the greatest extent available.</p>

	As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
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Response E.37: See Response E.14.

Comment E.38:

GHGRS Project Compliance Checklist	
Table A: General Plan Consistency	
<i>Pedestrian, Bicycle & Transit Site Design Measures</i>	
<p>CD-2.1: Promote the Circulation Goals and Policies in the Envision San José 2040 General Plan. Create streets that promote pedestrian and bicycle transportation by following applicable goals and policies in the Circulation section of the Envision San José 2040 General Plan.</p> <p>a) Design the street network for its safe shared use by pedestrians, bicyclists, and vehicles. Include elements that increase driver awareness.</p> <p>b) Create a comfortable and safe pedestrian environment by implementing wider sidewalks, shade structures, attractive street furniture, street trees, reduced traffic speeds, pedestrian-oriented lighting, mid-block pedestrian crossings, pedestrian-activated crossing lights, bulb-outs and curb extensions at intersections, and on-street parking that buffers pedestrians from vehicles.</p> <p>c) Consider support for reduced parking requirements, alternative parking arrangements, and Transportation Demand Management strategies to reduce area dedicated to parking and increase area dedicated to employment, housing, parks, public art, or other amenities. Encourage de-coupled parking to ensure that the value and cost of parking are considered in real estate and business transactions.</p>	<p>Here, the Compliance Checklist states:</p> <p>“Project will expand the bike network along 4th St. We plan to activate the street through enhanced street trees and added shade elements. We will not include mid-block crossings. Reduced parking schemes include shared parking between residential and commercial buildings. The parking garage includes replacement parking for Town Park Towers. The project will not have a TDM plan, but will qualify for a standard 20% reduction in parking” (Appendix H, p. 6).</p> <p>However, this response is insufficient, as the Compliance Checklist fails to mention elements that increase driver awareness, wider sidewalks, attractive street furniture, reduced traffic speeds, pedestrian-oriented lighting, mid-block pedestrian crossings, pedestrian-activated crossing lights, bulb-outs and curb extensions at intersections, Transportation Demand Management strategies, de-coupled parking, or on-street parking that buffers pedestrians from vehicles. Thus, by merely including a bike network, street trees and added shade elements, as well as reduced parking, the Project fails to demonstrate consistency with all aspects of this measure.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>

Response E.38: See Response E.15.

Comment E.39:

GHGRS Project Compliance Checklist	
Table A: General Plan Consistency	
<i>Pedestrian, Bicycle & Transit Site Design Measures</i>	
<p>CD-3.2: Prioritize pedestrian and bicycle connections to transit, community facilities (including schools), commercial areas, and other areas serving daily needs. Ensure that the design of new facilities can accommodate significant anticipated future increases in bicycle and pedestrian activity.</p>	<p>Here, the Compliance Checklist states: “We will prioritize bicycle connections by continuing the 4th St. bicycle along our complete 4th St. frontage. Project will provide ample short and long term bike parking directly adjacent to 4th St. As well, the project will replace street trees. As well, project will allow for clear wayfinding for pedestrians and cyclists” (Appendix H, p. 7).</p> <p>However, this response is insufficient, as the DSEIR fails to mention or support how the proposed bicycle parking will prioritize connections to transit, community facilities, and other areas service daily needs. Furthermore, the DSEIR fails to mention how the proposed Project will accommodate significant anticipated <u>future</u> increases in bicycle and pedestrian activity.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>

Response E.39: In addition to the information provided in the GHGRS checklist, which has been revised and included as Attachment B to the First Amendment to the Draft SEIR, the Initial Study (Appendix A: Section 4.17 pages 103-104) and Appendix I (Local Transportation Analysis) of the Draft SEIR have detailed discussions regarding pedestrian, bicycle, and transit facilities as they relate to the proposed project. In addition, refer to Response E.15. The measures listed in Response E.15, determined to be required by the City’s Public Works Department as Conditions of Approval, would accommodate anticipated future increases in bicycle and pedestrian activity. Therefore, the project would be consistent with General Plan Policy CD-3.2.

Comment E.40:

GHGRS Project Compliance Checklist	
Table A: General Plan Consistency	
<i>Water Conservation and Urban Forestry Measures</i>	
<p>MS-3.1 Require water-efficient landscaping, which conforms to the State’s Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial and developer-installed residential development unless for recreation needs or other area functions.</p>	<p>Here, the Compliance Checklist states: “Project will include proper soils management techniques to reduce evapotranspiration. Planting will include native, adaptive and drought tolerant planting to reduce watering needs. Irrigation designs will be low flow and drip wherever feasible. Stormwater flow-</p>

	<p>through planters will make use of precipitation, when available, to reduce dependence on irrigation. Irrigation timers will ensure proper timing for all landscape watering.” (Appendix H, p. 9).</p> <p>However, this response is insufficient. As previously discussed, PDFs are not mitigation measures and may be eliminated from the Project’s design. Here, the DSEIR fails to require the water-efficient landscaping and irrigation as formal mitigation. As such, we cannot guarantee that this measure would be implemented, monitored, and enforced on the Project site.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>
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Response E.40: Refer to Response E.17.

Comment E.41:

GHGRS Project Compliance Checklist	
Table A: General Plan Consistency	
<i>Water Conservation and Urban Forestry Measures</i>	
<p>MS-19.4: Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.</p>	<p>Here, the Compliance Checklist states: “The Project is currently exploring technology and systems needed to reuse potable water onsite. Cost effectiveness and final commitments to these technologies will not be flushed out until Building Permit phase” (Appendix H, p. 9).</p> <p>However, this response is insufficient, as the Compliance Checklist only indicates the Project is exploring systems needed to reuse potable water but does not explicitly require them.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>

Response E.41: See Response E.18.

Comment E.42:

GHGRS Project Compliance Checklist	
Table A: General Plan Consistency	
<i>Water Conservation and Urban Forestry Measures</i>	
MS-21.3: Ensure that San José’s Community Forest is comprised of species that have low water requirements and are well adapted to its Mediterranean climate. Select and plant diverse species to prevent monocultures that are vulnerable to pest invasions. Furthermore, consider the appropriate placement of tree species and their lifespan to ensure the perpetuation of the Community Forest.	<p>Here, the Compliance Checklist states: “We will have diverse landscaping to match the climate, using native and adaptive plants” (Appendix H, p. 9).</p> <p>However, this response is insufficient. By simply stating that the Project “will have diverse landscaping” the Project commits to the bare <i>minimum</i> requirements. As such, the Compliance Checklist fails to demonstrate how the Project would ensure the perpetuation of the Community Forest. Furthermore, the Compliance Checklist fails to provide any evidence of concrete actions or measures proposed to satisfy this measure.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>

Response E.42: See Response E.19.

Comment E.43:

GHGRS Project Compliance Checklist	
Table B: 2030 Greenhouse Gas Reduction Strategy Compliance	
<i>PART 2: RESIDENTIAL AND NON-RESIDENTIAL PROJECTS</i>	
Zero Net Carbon Residential Development 1. Achieve/exceed the City’s Reach Code, and 2. Exclude natural gas infrastructure in new construction, or 3. Install on-site renewable energy systems or participate in a community solar program to offset 100% of the project’s estimated energy demand, or 4. Participate in San José Clean Energy at the Total Green level (i.e., 100% carbon-free electricity) for electricity accounts associated with the project until which time SJCE achieves 100% carbon-free electricity for all accounts. Supports Strategies: GHGRS #1, GHGRS #2, GHGRS #3	<p>Here, the Compliance Checklist states: “Gas infrastructure is limited for future commercial cooking establishment within the future retail space only. Reach code has the following exemption (17.845.045) the project will request before end of the year to comply with this requirement. The project will participate in San Jose Clean Energy’s GreenSource/default program for this residential portion of the project” (Appendix H, p. 11).</p> <p>However, this response is insufficient for four reasons. First, the Compliance Checklist indicates that gas infrastructure is only limited, not completely excluded on the Project site. Second, the Compliance Checklist indicates that the Project has not yet been approved for the above-mentioned Reach Code exemption. Third, while the Project purportedly includes solar panels, the DSEIR fails to require on-site renewable energy</p>

	<p>generation to offset 100% of the Project’s estimated energy demand. Fourth, the Compliance Checklist indicates that the Project would participate only in the SJCE GreenSource level, rather than the TotalGreen level. Thus, the Project’s purported enrollment in the SJCE GreenSource program does not satisfy this measure.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>
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Response E.43: Note that the commenter’s table headings in this comment are incorrect. To be clear on what is being discussed, the Zero Net Carbon Residential Development (new Construction), is listed under Part 1: Residential Projects Only of Table B.

In addition, refer to Response E.20, which addresses this comment.

Comment E.44:

GHGRS Project Compliance Checklist	
Table B: 2030 Greenhouse Gas Reduction Strategy Compliance	
<i>PART 2: RESIDENTIAL AND NON-RESIDENTIAL PROJECTS</i>	
<p>Renewable Energy Development</p> <ul style="list-style-type: none"> • Install solar panels, solar hot water, or other clean energy power generation sources on development sites, or • Participate in community solar programs to support development of renewable energy in the community, or • Participate in San José Clean Energy at the Total Green level (i.e., 100% carbon-free electricity) for electricity accounts associated with the project. 	<p>Here, the Compliance Checklist states: “The project will install solar panels and/or solar hot water panels as part of our achievement of the REACH code and Title 24.” (Appendix H, p. 11).</p> <p>However, this response is insufficient. As previously discussed, PDFs are not mitigation measures and may be eliminated from the Project’s design. Here, the DSEIR fails to require “solar panels and/or solar hot water panels” as formal mitigation. As such, we cannot guarantee that this measure would be implemented, monitored, and enforced on the Project site.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>

Response E.44: See Response E.21.

Comment E.45:

GHGRS Project Compliance Checklist	
Table B: 2030 Greenhouse Gas Reduction Strategy Compliance	
<i>PART 2: RESIDENTIAL AND NON-RESIDENTIAL PROJECTS</i>	
Zero Waste Goal <ul style="list-style-type: none">• Provide space for organic waste (e.g., food scraps, yard waste) collection containers, and/or• Exceed the City’s construction & demolition waste diversion requirement. Supports Strategies: GHGRS #5	<p>Here, the Compliance Checklist states: “Will use onsite sorting of materials to exceed the City’s construction demo and waste diversion requirement.” (Appendix H, p. 11).</p> <p>However, this response is insufficient. Simply stating that the Project would exceed the City’s construction demolition and waste diversion requirement fails to provide substantial evidence that this goal would be implemented, monitored, and enforced on the Project site.</p> <p>As a result, we are unable to verify the Project’s consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.</p>

Response E.45: See Response E.22

Comment E.46: As the above table indicates, the DSEIR fails to provide sufficient information and analysis to determine Project consistency with all of the measures required by the GHGRS. As a result, we cannot verify that the Project is consistent with the GHGRS, and the DSEIR’s less-than-significant GHG impact conclusion should not be relied upon. We recommend that a revised EIR include further information and analysis demonstrating the Project’s consistency with the GHGRS.

Response E.46: See Responses E.33-E-37.

Comment E.47: Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Response E.47: This comment does not speak to the adequacy of the Draft SEIR. No response is required.

F. Preservation Action Council of San José (August 1, 2022)

Comment F.1: The Preservation Action Council of San Jose (PAC*SJ) appreciates the opportunity to provide Comment on the SEIR for the proposed Two-Tower High Rise ICON-ECHO Mixed Use Project located on 3 parcels totaling 2.19 acres at the Southeast Corner of Santa Clara Street and 4th Street. As currently described, the developer proposes to build one 267' mixed use tower with 415 residential-units, and one 282' mixed use Commercial Tower with 525,000 sq. ft. of Office Space and 8,500 sq. ft. of Retail Space.

To make way for this project, the project's applicant (Urban Catalyst), proposes to demolish all existing structures on the site including the following three structures which are contained within one parcel (APN 467-20-060) in the project's northernmost portion which are included within the St. James Square City Landmark District:

128 E. St. John Street: 1922 Single Story Commercial Garage

95 N. 4th Street: 1948 Single Story Commercial Building (potentially a auto service station)

77 N. 4th Street: 1927/1947/1960 Flat Top Commercial Building.

Response F.1: The project site is comprised of three parcels (APNs 467-20-079, -081, -060) and a portion of one parcel (APN 467-20-080). The commenter's understanding of the project is correct, except that the height of both towers would be 268 feet tall as discussed in Section 2.2, Project Discussion, of the Draft SEIR.

Comment F.2: Given that the St James Square City Landmark District has irregular borders on its North, South, East and West edges, PAC*SJ requested via its October 28, 2021 SEIR Scoping Comments for this project an explanation as to why the parcels/buildings were specifically and intentionally included within the Historic District. PAC*SJ also requested that the Historic Consultant (Treanor HL) provide a detailed analysis of the parcel and its buildings before the City determines if these up to Century-Old structures are individually eligible for listing on the NRHP, CRHR or as a City Landmark

Response F.2: As discussed on page 84 of the Draft SEIR, the St. James Square City Landmark District contains only nine contributing resources (including St. James Park) and 16 non-contributing structures and vacant lots. Section 2 of Resolution 57147 adopted by the City Council on October 11, 1983 (recorded January 10, 1984) found that the historic district designation would ensure the preservation and/or thoughtful modification of buildings in the district. Since the district contains nearly twice as many non-contributing properties as contributing properties, as well as vacant lots, the City's interpretation of the intent of including those properties within the boundaries of the district was to address the compatibility of future infill development. All the buildings on the project site were documented and evaluated for historic significance, including the properties that are the subject of this comment, which were determined to be ineligible for individual listing in the federal, state, and local inventories. Please refer to Appendix D (Historic Resources Evaluation) and pages 62-70 and 77 of the Draft SEIR.

Comment F.3: Given that these resources are representative of buildings constructed during pre-Great Depression and Post World War II periods and are located both within and between Historic Districts, PAC*SJ noted that their demolition represents a loss of historic context, so their historic value should not be a matter of speculation. TreanorHL did in fact provide within its April 5, 2022 Historic Resources Assessment an evaluation of historic significance for each of these properties. On page 77 of the Draft SEIR by David Powers, the following is asserted:

“All the buildings and structures on the project site were evaluated for individual potential significance and eligibility for listing in the NRHP, CRHR, and the City’s HRI as a Candidate City Landmark under San José Municipal Code Section 13.48.100.H. The buildings were determined to be ineligible for listing in the NRHP and CRHR and ineligible for listing as a Candidate City Landmark. Therefore, the buildings and structures on-site are not considered to be historical resources under CEQA and their demolition will not result in a significant impact.”

While PAC*SJ does not necessarily agree or disagree with the Report’s assertions regarding eligibility, we do assert that by demolishing these historic buildings to make way for the proposed ICON/ECHO project, damage to San Jose’s historic fabric is likely to be substantial. On page 78 of the Draft SEIR, the report begins to assess whether the project may cause a substantial adverse effect on the significance of a historical resource (St. James Square City Landmark District) under CEQA relative to the design of the Northern Tower (ICON). A summary of TreanorHL’s evaluation of conformance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties (Standards), St. James Square Historic District Design (Guidelines), and the National Register historic integrity was described.

Response F.3: While the commenter does not agree or disagree with TreanorHL’s report, the commenter confirmed that TreanorHL provided an evaluation of historic significance of the on-site properties. The buildings at 128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street are not contributors to the St. James Square City Landmark District. The building located at 95 North Fourth Street was constructed in 1948, outside the St. James Square City Landmark District period of significance of 1848 to the 1930s. As mentioned on page 77 of the Draft SEIR, the buildings located at 128 East St. John Street and 77 North Fourth Street do not contribute to the significance of the St. James Square City Landmark District because they do not embody the character-defining features of the District including monumental massing, vertical orientation, architectural detailing and materials. Because the buildings do not contribute to the significance of the St. James Square City Landmark District, demolition of those buildings would not result in a significant impact to the district.

Also, to clarify, the proposed residential Northern Tower is referred to as the “Echo”, not the “Icon,” as stated in the comment.

Comment F.4: As noted in PAC*SJ’s Scoping Comments letter, the proposed ECHO Residential Tower is located within the St. James Square City Landmark District and is of massive scale relative to the historic buildings within the Historic District, attention to the impact of the project’s height and massing is needed. The St. James Square Historic District Design Guidelines (as adopted by City Council on 10/17/89) state that they are “intended for use by architects, other design professionals, historic preservation specialists and property owners to promote sensitive and compatible design of

modifications to existing structures and the construction of new buildings” such as the ECHO Residential Tower. This document also describes the area around the Park itself as an “Area of Historic Sensitivity” that calls for new development that is “designed to enhance the character of the designated resource.” PAC*SJ requests that the SEIR explains how the project enhances the character of the Historic District and how it meets or exceeds the Historic District’s Design Guidelines.

Response F.4: Pages 81 and 84 of the Draft SEIR acknowledges that the design of the proposed Northern Tower would not comply with the Site Layout/Setbacks, Surface Treatment, Detailing, and Landscaping guidelines of the St. James Square Historic District Design Guidelines or Secretary of the Interior’s Standard 9, which is the primary standard applicable to the project (Standards 1-8 do not apply). The Draft SEIR discloses that the proposed design of the Northern Tower would not be compatible with the St. James Square City Landmark District in features, size, scale, proportion, and massing; would impact the design, feeling, and association of the St. James Square City Landmark District; and would impair the historic integrity of the district. Consistent with the CEQA requirements, the Draft SEIR discloses the proposed project would have a significant unavoidable impact on the St. James Square City Landmark District. In addition, since the initial project plans were submitted to the City, the project applicant made design changes to the Northern Tower to address the impact to the St. James Square City Landmark District. For the northern façade of the Northern Tower, a double height ground floor with entry canopy was added, the façade of the base was enhanced to be more compatible with the historic scale, pattern, and building materials, and the top of the podium was redesigned with a step back on the fifth floor. For the eastern façade of the Northern Tower, the base façade was enhanced to carry base/historic scale around the corner, the façade pattern was redesigned to better relate to the Southern Tower, and planting was added along the street level. For the western façade of the Northern Tower, the pattern and wall texture along the western wall was enhanced. Even with the design changes, the Draft SEIR concluded that the project would still result in a significant unavoidable impact to the St. James Square City Landmark District.

Comment F.5: As for the Report’s analysis of the projects success in meeting the Secretary of the Interior’s Standards, here is a quote from the report:

“...the Northern Tower would not be compatible with the St. James Square City Landmark District in terms of size, scale, proportion, and massing. The historic district consists of two- to 4-story buildings that are rectangular in plan and large in mass. The district contributors within the St. James Square City Landmark District are set back on platforms above the street level from the sidewalk. The Northern Tower would be set back less than four feet at the northeast corner of the podium while upper floors would have no set back. Additionally, the proposed Northern Tower would step down two stories in height at the district-facing northern façade. For these reasons, the Northern Tower is not consistent with Standard 9.

As for the Reports analysis of the project’s success in meeting the St. James Square Historic District Design Guidelines, here is a quote from the report:

“The proposed Northern Tower does not conform with the Site Layout/Setbacks, Surface Treatment (fenestration and detailing), Detailing, and Landscaping guidelines.”

It is concerning that the City may accept significant impacts without a robust consideration of alternative designs that would minimize the impact of the project to the significance of two of San Jose’s most significant Historic Districts.

Response F.5: The commenter mentions that the project would impact the significance of two historic districts. To clarify, no work is proposed within the Downtown Commercial National Register Historic District (San José Downtown Commercial Historic District) which is located across Santa Clara Street, south of the proposed Southern Tower; therefore, the San José Downtown Commercial Historic District would not be impacted by the project (refer to Response F.6 below). Pages 153-164 of the Draft SEIR provides analysis of six project alternatives that have been identified to reduce significant impacts anticipated to result from construction and implementation of the proposed project. A location alternative was considered but rejected, and the analysis also included a No Project alternative. In addition, four project design alternatives were discussed that would reduce the height and/or setbacks of the proposed project and potentially achieve greater compliance with the Secretary of the Interior’s Standards and local guidelines to reduce or avoid the impairment of the overall historic integrity of the St. James Square City Landmark District and minimize conflicts with General Plan policies adopted for the purpose of avoiding or mitigating an environmental effect. The Draft SEIR includes analysis of the four design alternatives, including studies of the potential impacts of alternative height and massing for the purpose of decision-making. If the City Council were to approve the proposed project, in compliance with CEQA Guidelines Section 15093, a Statement of Overriding Considerations must be adopted with findings that the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects.

Comment F.6: As for the South Tower side of the proposed project, PAC*SJ specifically noted in its scoping comments the significance of the Downtown Commercial Historic District to the south of the ECHO tower. The height and massing of the buildings to the south of the proposed commercial tower on East Santa Clara Street are primarily 30’ in width and 2-3 stories tall. PAC*SJ requests that the design of the south tower reflects the Historic District’s buildings all the way down to street level.

PAC*SJ specifically noted the importance of the Alliance Building at 101-109 East Santa Clara Street, plus the mural on that building’s eastern façade of 1968 Olympic Gold Medalist Tommie Smith’s Black Power Salute. The building should not be overshadowed, and the cultural significance of the mural should not be hidden from public view. Neither issue appears to be included in the current SEIR Report.

Response F.6: The proposed Southern Tower was analyzed for conformance with the 2019 Design Guidelines and Standards because it is located in the General Plan Downtown Growth Area and has Historic Adjacency. Historic adjacency is determined by 1) approximately 60 percent of the properties within 200 feet of the

project site are listed in the City's Historic Resources Inventory (HRI), 2) the site is within 100 feet of a Designated City Landmark (e.g., 30 North Third Street), and the site is adjacent to two historic buildings listed on the HRI (e.g., 30 North Third Street and 109 East Santa Clara Street). As discussed on page 88 of the Draft SEIR, the proposed Southern Tower does not fully comply with the 2019 Guidelines and Standards (e.g., height transition and rear transition of Standard 4.2.2 and massing, façade, and ground floor of Standard 4.2.4). Refer to pages 85 to 88 for the full analysis of the Southern Tower's conformance with the 2019 Design Guidelines and Standards.

As mentioned on page 88 of the Draft SEIR, for a project to cause a substantial adverse change in the significance of a historical resource, it must demolish or materially alter in an adverse manner those physical characteristics that convey the resource's historic significance and accounts for its identification as a San José City Landmark or Candidate City Landmark, California Register of Historical Resources (CRHR) or National Register of Historic Places (NRHP) property, or CRHR or NRHP eligible property. No work is proposed on an off-site historical resource and the Downtown Commercial National Register Historic District (San José Downtown Commercial Historic District) is located across Santa Clara Street to the south of the proposed Southern Tower. Because the proposed project would not physically impact any off-site historical resource, there would be no significant impacts the Alliance Building or the San José Downtown Commercial Historic District.

The mural on the Alliance Building adjacent to the project site was painted in 2003 and is not considered a historic resource under CEQA. However, the applicant would be required to address federal and state laws that apply to public art if the project is approved. The applicant has had multiple meetings with the artist's representative and the parties have discussed options for commemorating the mural. At this time, no decisions have been made, and as discussed above, the mural is not considered a historical resource under CEQA. Therefore, no additional analysis or mitigation is required to address the comment.

To clarify, note that the proposed Southern Tower, which would consist of the office and retail component, is referred to as the "Icon" tower, not "Echo," as stated in the comment.

Comment F.7: As noted in PAC*SJ's Scoping Comments, this SEIR should also include a detailed analysis of the direct and indirect impact of the proposed development on other nearby/adjacent historic structures and potential Districts as a whole, along with a detailed analysis of multiple alternatives that eliminate or substantially reduce the impact of this project on San Jose's historic resources. The Report does include a summary of On-Site/Off-Site Impacts that includes a listing of individual properties, but the current Report is lacking in its coverage of the impact to the St. James Square Historic District and barely references the impact to the Downtown Commercial Historic District. Furthermore, it does not adequately address the cumulative impact of this project in the context of all other projects currently underway or envisioned in the immediate vicinity of the ICON/ECHO Project.

Response F.7: An analysis of the Northern Tower's impacts to the St. James Square City Landmark District were evaluated under the Secretary of The Interior's Standards for Rehabilitation and the St. James Square Historic District Design Guidelines and the Draft SEIR disclosed a significant unavoidable impact to the historic district. The historic adjacency only applies to the proposed Southern Tower because the Northern Tower does not meet the adjacency criteria. Because the Southern Tower is located across the street from multiple historic buildings within the San José Downtown Commercial Historic District and is adjacent to historic resources (30 North Third Street, 101 East Santa Clara Street, and multiple properties at 100 to 150 East Santa Clara Street), the Draft SEIR analyzed potential impacts of the proposed Southern Tower on these historical resources. As previously discussed in Response F.6, for a project to cause a substantial adverse change in the significance of a historical resource, it must demolish or materially alter in an adverse manner those physical characteristics that convey the resource's historic significance and accounts for its identification as a San José City Landmark or Candidate City Landmark, CRHR or NRHP property, or CRHR or NRHP eligible property. No work is proposed on an off-site historical resource and the San José Downtown Commercial Historic District is located across Santa Clara Street. Because the proposed project would not physically impact any off-site historical resource, there would be no significant impacts the San José Downtown Commercial Historic District or any identified off-site historical resource. In addition, the project includes six alternatives, including a location alternative which was considered and rejected and a No Project – No Development Alternative. As discussed in Response F.5, the Draft SEIR identified four project design alternatives that would reduce the height and/or setbacks of the proposed project and potentially achieve greater compliance with the Standards and local guidelines to reduce or avoid the impairment of the overall historic integrity of the St. James Square City Landmark District and conflicts with General Plan policies adopted for the purpose of avoiding or mitigating an environmental effect. Each of the four design alternatives provide an analysis of the alternative relative to the proposed project and a diagram that shows the height and massing of the alternative.

Downtown San José is identified as a Growth Area in the City's General Plan due to its proximity to transit and other services and is anticipated to accommodate a significant amount of future development. The Downtown Strategy 2040 FEIR concluded that build out of the Downtown Strategy 2040 plan would have significant unavoidable cumulative impacts to historic resources at the Citywide level. As discussed on page 92 of the Draft SEIR and in Response F.8 below, a 1,500-foot radius surrounding the project site was considered for the cultural resources cumulative impacts analysis to account for the San José Downtown Commercial Historic District (approximately 1,150 feet from the project site) and any other historic structures that have the potential to be physically impacted by implementation of the proposed project. Refer to Section 5.0 of this document for text clarification regarding the San José Downtown Commercial Historic District. The Draft SEIR concluded that the proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District which would have a cumulative impact when combined with the alterations to the historic district that

have occurred over time since its designation in 1984, which would result in a significant unavoidable impact. As discussed for Response F.5, if City Council approves the proposed project, a Statement of Overriding Consideration, pursuant to CEQA Guidelines, Section 15093, is required.

Comment F.8: Section 15130(b) of the State CEQA Guidelines defines consideration of the following two elements as necessary to provide an adequate discussion of cumulative impacts: (A) a list of past, present, and reasonably anticipated future projects producing related or cumulative impacts, including those projects outside the control of the Agency, or (B) a summary of projections contained in a local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect.

Projects that should be taken into account in a revision of the SEIR include but should not be limited to the SuZaCo Mixed-Use Project and the Fountain Alley Project. Both Projects are within the Land Use Control of the City of San Jose. If there are other projects that this City anticipates, those projects should be referenced as well. It is worth noting that VTA also providing scoping comments that suggest the need for an evaluation of the impact of construction and operation of planned VTA/BART projects on San Jose's historic fabric. As required by CEQA, a list of development and transportation projects should be added to and reconciled with the conclusions of this Project Report.

Response F.8: To clarify, the cumulative discussion is not limited to the SuZaCo Mixed-Use and the Fountain Alley Mixed-use projects. Table 3.0-1 on pages 17-20 of the Draft SEIR provides a summary of the approved but not yet constructed/occupied and pending projects within a 0.5 mile radius of the project site.

The geographic area for cultural resources is dependent on the location and potential impacts to designated cultural resources and can vary by the type of cultural resource to be impacted (e.g., historic districts, City Landmarks, etc.). For this project, the geographic study area is the project site, the surrounding area, and St. James Square City Landmark District. As mentioned in Response F.7, a 1,500-foot radius surrounding the project site was considered for the cultural resources cumulative impacts analysis. Impacts to the San José Downtown Commercial Historic District, which include the SuZaCo Mixed-Use and San José Fountain Alley developments, were included as part of the cumulative impacts analysis as it is located within the radius considered for the cumulative impacts analysis. While the proposed Southern Tower would not fully comply with the 2019 Guidelines and Standards, it would not demolish or materially alter in an adverse manner those physical characteristics that convey the historic significance and integrity of the historic context buildings or adjacent properties listed in the City's HRI and they could continue to be listed in the HRI. Due to the distance and surrounding roadways and buildings between both developments and the project site, construction of the project would not diminish the historic integrity of the San José Downtown Commercial Historic District. As discussed on pages 92-93 of the Draft SEIR, the proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984.

Per the VTA's website, the BSV Phase II Project is estimated to occur from 2022 until 2028. The project variables (e.g., construction timeframe) is subject to change. Construction of the tunnels would occur underground (at least 40 feet) and would not impact the proposed project. As discussed in the BSV Phase II Project Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (SEIS/SEIR), construction noise and vibration impacts on historic resources from the BART extension would be reduced to less than significant with mitigation. Refer to Responses C.1 through C.7 for the City's responses to the VTA comment letter.

Comment F.9: Finally, a robust summary of financial and physical mitigation measures applicable to this project should be provided in advance of project consideration should the City decide to approve this project via a statement of overriding consideration to justify the granting of demolition permits. PAC*SJ is particularly interested as to how the historic fabric within and in the vicinity of this proposed project will be preserved and how San Jose will be able to fund the protection of its historic fabric as it simultaneously seeks to meet its Envision 2040 Program Goals on a project-by-project basis. If the City determines that negative impacts are unavoidable, PAC*SJ asks that mitigation funding be provided to the City by the Developer for preservation projects within San Jose.

Response F.9: . Financial contributions to support preservation of other buildings within the City is not considered mitigation under CEQA for the impact to the historic district. The decision-makers may consider economic, planning, and CEQA considerations when determining whether or not to approve a project alternative or adopt a Statement of Overriding Considerations.

SECTION 5.0 DRAFT EIR TEXT REVISIONS

This section contains revisions to the text of the Icon-Echo Mixed-Use Project Draft SEIR dated June 2022, and the associated Initial Study (Appendix A). Revisions to the GHGRS Checklist are shown in Attachment B of the First Amendment to the Draft SEIR. Revised or new language is underlined. All deletions are shown with a ~~line through the text~~.

Draft SEIR, Section 2.0,
Page 13

A new subheading is **ADDED** after Section 2.2.2 Green Building Measures as follows:

2.2.3 Air Quality Construction Measures

The project applicant proposes the following air quality construction measures:

- Offer temporary filtration units for the Town Park Towers building residents and at Little Einstein Montessori Preschool and Horace Mann Preschool and Elementary School;
- Prohibit grading and other dust-generating activities on days with an Air Quality Index forecast of greater than 100 for particulates in the project area;
- Minimize the amount of excavated material or waste materials stored at the site;
- Document the frequency of watering on exposed surfaces; and
- Provide a telephone number and person to contact at all residences and businesses within 1,000 feet of the project site regarding dust complaints.

Draft SEIR, Section 3.1,
Page 21

The footnote in the first paragraph under the Section 3.1 Air Quality heading is **REVISED** as follows:

¹⁰The number of parking spaces have changed and 10 commercial condominium units have been added to the retail use since the air quality analysis was first completed. The change in the number of parking spaces and 10 commercial condominium units did not change the conclusions of the analysis. Since the Air Quality Assessment was updated in March 2022, the number of parking spaces has decreased from 1,146 to 992. Nevertheless, a decrease in the number of parking spaces would not change the conclusions of the analysis. Refer to the Air Quality Assessment (Appendix B) for additional explanation. Note that the Air Quality Assessment assumed the project applicant would opt into SJCE at the GreenSource level as it is the default service.

Since completion of the Air Quality Assessment, the applicant has agreed to opt into SJCE at the TotalGreen level (100 percent renewable energy) for both towers. Therefore, this analysis is more conservative.

Draft SEIR, Section 3.1.2.3,
Page 39

The following sentence is **ADDED** to footnote 19 as follows:

While the Miro development (File Nos. SP17-009 and T16-056) is within 1,000 feet of the site, it was not included in the cumulative discussion since construction of the Miro development would be completed prior to construction of the proposed project.

Draft SEIR, Section 3.1.2.3,
Page 42

The last sentence of the first paragraph is **REVISED** as follows:

Refer to Appendix ~~CB~~ for more information.

Draft SEIR, Section 3.1.2.3,
Page 42

The following text is **ADDED** to the last paragraph under the Construction Risks Impacts from Nearby Development subheading as follows:

As shown in Table 3.1-8 above, the combined PM_{2.5} concentration from existing sources and construction of nearby projects would be <1.19 µg/m³ (unmitigated) and would exceed the BAAQMD significance cumulative threshold of 0.8 µg/m³ for PM_{2.5}, resulting in a pre-existing cumulative health risk impact. When combined with the proposed project, the PM_{2.5} concentration would be 1.24 µg/m³, even after implementation of Mitigation Measure AIR-1.1 and the identified Standard Permit Conditions. However, as shown in Table 3.1-7, the project's annual PM_{2.5} concentration would be 0.26 (without mitigation) which would be below BAAQMD single-source threshold of 0.3 µg/m³. The required mitigation would further reduce the project-level annual PM_{2.5} concentration from 0.26 µg/m³ to 0.05 µg/m³ which is well below the single-source threshold. While there is a pre-existing cumulative health risk impact and project emissions would be reduced to less than significant with the identified mitigation measures, the project applicant proposes to offer temporary filtration units for the Town Park Towers building residents and at Little Einstein Montessori Preschool and Horace Mann Preschool and Elementary School, prohibit grading and other dust-generating activity on days with an Air Quality Index forecast of greater than 100 for particulates in the project area, minimize the amount of excavated material or waste materials

stored at the site, document the frequency of watering on exposed surfaces, and provide a telephone number and person to contact at all residences and businesses within 1,000 feet of the project site regarding dust complaints as described in the Project Description (refer to Section 2.0). Therefore, the project's contribution to existing cumulative impacts from cumulative construction sources would not be cumulatively considerable. **[Same Impact as Approved Project (Less Than Significant Cumulative Impact)]**

Draft SEIR, Section 3.3.2.1,
Page 85

The last sentence under the heading 2019 Downtown Design Guidelines and Standards Analysis is **REVISED** as follows:

Therefore, the project was evaluated for conformance with Standards 4.2.2 Massing Relationship to Context and 4.2.4 Historic Adjacency; Standard 4.2.3 - Civic Icon Adjacency would not and 4.2.4 ~~Historic Adjacency~~ apply.¹⁴

Draft SEIR, Section 3.3.2.2,
Page 92

The following text is **ADDED** to the first paragraph as follows:

The geographic area for cultural resources is dependent on the location and potential impacts to designated cultural resources and can vary by the type of cultural resource to be impacted (e.g., historic districts, City Landmarks, etc.). For this project, the geographic study area is the project site, the surrounding area, San José Downtown Commercial Historic District (approximately 1,150 feet), and St. James Square City Landmark District. Therefore, a 1,500 foot radius surrounding the project site was considered for the cultural resources cumulative impact analysis.

Draft SEIR, Section 3.3.2.2,
Page 92

The following text is **ADDED** under the Historic Resources heading as follows:

As mentioned previously, the project site is located across Santa Clara Street, north of the San José Downtown Historic District. In addition, the proposed project would not demolish or materially alter the San José Downtown Commercial Historic District; therefore, the project's impact to the district would not be cumulatively considerable.

¹⁴ While Building Nos. 1 and 19 are listed in the City's HRI and are within the boundaries of the St. James Square City Landmark District, they are identified as non-contributing structures. In addition, Building Nos. 5 and 7 are no longer extant and have been replaced by contemporary developments. Therefore, the Northern Tower does not have any adjacent historic context buildings.

Mitigation measure HAZ-1.2 is **REVISED** as follows:

Prior to issuance of any demolition, grading, or building permit, whichever occurs first, the project applicant shall enroll in the SCCDEH Site Cleanup Program. The project applicant shall work under regulatory oversight to determine if additional Phase II soil, soil vapor and groundwater investigations and remediation are required. The project applicant shall provide documents such as a Site Management Plan, Removal Action Plan or equivalent plans as required by the DEH. The Plan(s) and evidence of regulatory oversight shall be provided to the City of San José Director of Planning, Building, and Code Enforcement, or director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

The first paragraph after MM HAZ-1.4 is **REVISED** as follows:

With implementation of all four of the identified mitigation measures, the site would be remediated to acceptable residential screening levels and redevelopment of the project site would not significantly impact the public or the environment due to exposure to any hazards or contamination sources.

The third paragraph is **REVISED** as follows:

The City of San José encourages the use of building materials that include recycled materials and makes information available on those building materials to developers. The towers would be built to current codes, which require insulation and design to minimize wasteful energy consumption. Additionally, the proposed project would be designed to achieve LEED Silver certification and constructed in compliance with CALGreen requirements, the City's Reach Code, the City's Council Policy 6-32 (Private Sector Green Building Policy) and Green Building Ordinance, and would also be required to comply with the City's Reach Code and will be served by SJCE's TotalGreen default program (GreenSource) (100 percent renewables), ~~which currently provides 60 percent renewable energy, and this percentage will increase in the future.~~ The project would be constructed consistent with City Council Policy 6-29 (Post Construction Urban Runoff Management) and the RWQCB Municipal Regional Stormwater NPDES permit to avoid impacts to waterways. The project site is located in the downtown area

which would provide future residents, employees, and patrons access to existing transportation networks and other downtown services. Therefore, the proposed project would facilitate a more efficient use of resources over the lifetime of the project. The project would not result in significant and irreversible environmental changes to the project site.

Appendix A, Section 3.0,
Page 13

A new subheading is **ADDED** after Section 3.1.4 Green Building Measures as follows:

3.1.5 Air Quality Construction Measures

The project applicant proposes the following air quality construction measures:

- Offer temporary filtration units for the Town Park Towers building residents and at Little Einstein Montessori Preschool and Horace Mann Preschool and Elementary School;
- Prohibit grading and other dust-generating activities on days with an Air Quality Index forecast of greater than 100 for particulates in the project area;
- Minimize the amount of excavated material or waste materials stored at the site;
- Document the frequency of watering on exposed surfaces; and
- Provide a telephone number and person to contact at all residences and businesses within 1,000 feet of the project site regarding dust complaints.

Appendix A, Section 4.6.2,
Page 42

The first footnote under Table 4.6-2: Estimated Annual Energy Use of Proposed Development is **REVISED** as follows:

Table 1.3-1: Estimated Annual Energy Use of Proposed Development			
Development ¹	Electricity Use (kWh)	Natural Gas Use (kBtu) ¹	Gasoline (gallons per year) ²
Apartments High-Rise	1,605,580	0	115,645
Enclosed Parking With Elevator	2,556,800	0	0
General Office Building	9,014,250	0	245,597
Strip Mall	88,315	19,890	5,266
Total:	13,264,945	19,890	366,508
<p>Source: Illingworth & Rodkin, Inc. <i>Icon-Echo MU Tower</i>. March 30, 2022.</p> <p>Notes: ¹ The City of San José passed an ordinance in December 2020 which prohibits the use of natural gas infrastructure in new buildings starting on August 1, 2021. Natural gas use was set to zero for the residential and office land uses. Natural gas use was assumed for the retail use as a commercial kitchen could occupy the retail space with approval of an exemption (refer to City Ordinance No. 30502). <u>Since completion of the Air Quality Assessment, the project applicant has confirmed that natural gas infrastructure and natural gas usage is no longer proposed within the retail space. Therefore, this analysis provides a more conservative analysis and the conclusions would not change.</u></p> <p>² Apartments High-Rise Annual VMT 2,879,569 / 24.9 mpg = 115,645 gallons of gasoline. General Office Building Annual VMT 6,115,377 / 24.9 mpg = 245,597 gallons of gasoline. Strip Mall Annual VMT 131,127 / 24.9 mpg = 5,266 gallons of gasoline.</p>			

Appendix A, Section 4.7.1.2,
Page 47

A new row is **ADDED** to Table 4.7-1: Active Faults Near the Project site as follows:

Table 1.3-2: Active Faults Near the Project Site	
Fault	Distance from Site
Hayward	5.2 miles
San Andreas	12.8 miles
Calaveras	7.3 miles
Monte-Vista Shannon	7.3 miles
<u>Silver Creek</u>	<u>0.9 miles</u>

Appendix A, Section 4.8.2,
Page 60

The first paragraph is **REVISED** as follows:

The project is a high-density, mixed-use development in a dense urban core with good transit connections consistent with the General Plan designation and planned growth analyzed in the Downtown Strategy 2040 FEIR. The proposed project would be required to comply with Policy 6-32 (Private Sector Green Building Policy), the City's Green Building Ordinance and Reach Code, CALGreen, and CBC requirements. In addition, the project proposes LEED Silver certification, which is in line with General Plan Action MS-2.11 and Policy 6-32. The project would comply with Climate Smart San José, as described below, and ~~proposes the installation of solar panels and/or solar hot water panels for the Southern Tower (commercial)~~ would be "solar ready" consistent with the City's Reach Code by proposing solar electrical generation which would be installed per Reach

Code requirements. The project applicant proposes participation in SJCE's TotalGreen program for both the Northern and Southern Towers which is consistent with GHGRS #1 and #3.¹⁵ ~~The project would include natural gas use only for the future commercial cooking establishment of the proposed retail space, which is allowed under a limited exemption to the City's Reach Code, currently available until December 31, 2022, for newly constructed food service establishments with cooking equipment or a commercial kitchen, per the City's Ordinance 30502.~~^{16,17} No natural gas usage is proposed for the office or residential component of the project (consistent with GHGRS #2). The project is not proposing to retrofit an existing building; therefore, GHGRS #4 is not applicable.

Appendix A, Section 4.8.2,
Page 60

The second paragraph is **REVISED** as follows:

In addition, the project proposes to use on-site sorting of materials to exceed the City's construction and demolition waste diversion requirement and both towers would have the infrastructure needed to separate all waste streams for maximum waste diversion per SB 1383. Multi-family properties would be compliant with SB 1383 because organics would be composted when collected with garbage. In addition, businesses are required to have solid waste collection through Republic Services to comply with the City's Municipal Code and SB 1383 (consistent with GHGRS #5). The proposed project includes off-site improvements to expand the bicycle network along North Fourth Street and proposes to activate the street through enhanced street trees and the addition of shade elements. Additionally, the project site is within one block of alternative modes of transportation and would provide bicycle parking and showers exceeding the City's Municipal Code requirements (consistent with GHGRS #6). The project would include media filters and flow-through planters. The proposed project would also include water-efficient fixtures and landscaping, in compliance with the City-approved landscape plan (consistent with GHGRS #7). The proposed project does not propose to participate in a car

¹⁵ ~~While the project would not opt into SJCE at the TotalGreen level (100 percent renewable energy), the project will utilize SJCE's GreenSource program with 60 percent renewable energy (which will increase in the future).~~

¹⁶ City of San José. Ordinance No. 30502. Accessed June 1, 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/69230/637485403354170000>.

¹⁷ City of San José. San José Municipal Code Section 17.845.045 - Limited Exemption for Manufacturing and Industrial Facilities and Food Service Establishments. Accessed June 1, 2022.

https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT17BUCO_CH17.845PRNAGAINNECOBU.

sharing program as parking would not exceed the City's parking requirement and qualifies for a 20-percent reduction in parking, due to the project's location in the immediate vicinity of transit and providing bicycle parking spaces in conformance with City code requirements; therefore, the project would be inconsistent with General Plan Policy TR-7.1 or Goal TR-8.5 but still minimizes the need for additional parking. See Appendix H for additional description of measures proposed for GHGRS compliance. The project would implement most applicable GHGRS consistency options intended to reduce GHG emissions.

Appendix A, Section 4.8.2,
Page 60

Footnote 33 is **DELETED**:

³³ ~~While the project would not opt into SJCE at the TotalGreen level (100 percent renewable energy), the project will utilize SJCE's GreenSource program with 60 percent renewable energy (which will increase in the future).~~

Appendix A, Section 4.8.2,
Page 61

The first full paragraph is **REVISED** as follows:

As discussed in *Section 4.6 Energy*, the project would be designed and constructed in compliance with the City of San José Council Policy 6-32, Green Building Ordinance, Energy and Water Building Performance Ordinance, CALGreen requirements, and Reach Code. In addition, Action MS-2.11 of the General Plan requires new development to incorporate energy conservation and efficiency through site design, architectural design, and construction techniques. The proposed project is in a Planned Growth Area of the City that is well-served by transit. Lastly, the project would be required to implement the Condition of Approval identified below. For these reasons, the project is consistent with the City's climate action goals as set forth in Climate Smart San José.

Condition of Approval:

- **Proof of Enrollment in San José Clean Energy (SJCE).** Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building and Code Enforcement, or Director's designee, proof of enrollment in the SJCE TotalGreen program (approximately 100 percent renewable energy). Program enrollment requirements were determined by the level assumed in the approved environmental clearance for the project in accordance with the California Environmental Quality Act (CEQA).

If it is determined the project's environmental clearance requires enrollment in the TotalGreen program, neither the occupant, nor any future occupant, may opt out of the TotalGreen program.

Appendix A, Section 4.19.1.1,
Page 111

The following text is **ADDED** under the Senate Bill 1383 subheading as follows:

SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The bill grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that at least 20 percent of currently disposed edible food is recovered for human consumption by 2025. Multi-family properties are compliant with SB 1383 because organics are already composted when collected with garbage. There are new outreach requirements for multi-family property owners and managers which include educating employees and tenants about how to properly sort organic waste into the correct containers and provide information to new tenants within 14 days of occupation.

Appendix H

Appendix H is **UPDATED** to clarify the project's compliance with the 2030 GHGRS. See Attachment B of this document for the revised GHGRS checklist.

Attachment A: Draft SEIR Comment Letters

Attachment B: Revised Greenhouse Gas Reduction Strategy Checklist